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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 MARK I. SOKOLOW, et al.,

4 Plaintiffs,

5 v.

04 CV 397 (GBD)

6 PALESTINE LIBERATION
7 ORGANIZATION, et al.,

8 Defendants.

9 New York, N.Y.
10 January 21, 2015
9:40 a.m.

11 Before:

12 HON. GEORGE B. DANIELS,

13 District Judge

14 APPEARANCES

15 ARNOLD & PORTER LLP
Attorneys for Plaintiffs

16 BY: KENT A. YALOWITZ
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21 BY: MARK J. ROCHON
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23 Also present: RACHELLE AVITAL, Hebrew interpreter
24 RINA NE'EMAN, Hebrew interpreter
25

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(Trial resumed; jury not present)

THE COURT: I still have some things to review given that I received most of this information this morning, some within the hour. The only thing I am going to address now is the issues with regard to this witness.

I received a letter from the plaintiffs objecting to certain exhibits to be used on cross-examination, but quite frankly I have no clue as to what these exhibits are since the exhibits weren't attached.

MR. YALOWITZ: Your Honor, I received them this morning by hand when I arrived in the courtroom. Perhaps Mr. Rochon has a copy that he can share with the Court.

MR. ROCHON: I do, your Honor.

So I will hand up what are Defendants' 71 -- I can give a copy of these to Mr. Yalowitz -- 72, 73 and 74, which are photographs of Yasser Arafat, and two maps.

THE COURT: Give me everything that you still intend to use.

MR. ROCHON: Also, they object to the use of Exhibit 70, which is a report from the United States Department of State, dated February 25, 2004.

MR. YALOWITZ: Also, Mr. Rochon, if you could give the judge a copy of Exhibit 29.

MR. ROCHON: Exhibit 29, your Honor, I don't have a clean copy. It's being brought here now. Unfortunately, my

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1 copy is highlighted.

2 THE COURT: What is it?

3 MR. ROCHON: It's previously been marked in evidence.
4 It's a United Nations report.

5 MR. YALOWITZ: It has not been marked in evidence.

6 THE COURT: Is it in evidence?

7 MR. ROCHON: I said marked.

8 THE COURT: There is no such thing as marked in
9 evidence.

10 MR. ROCHON: It's been marked for identification
11 purposes. It's 29. The plaintiffs have had that one for a
12 while, although I did not indicate I would use it on cross, as
13 Mr. Yalowitz indicates, until this morning.

14 THE COURT: What is that?

15 MR. ROCHON: A united Nations report. My copy is
16 marked up. I have only marked-up copies here.

17 MR. YALOWITZ: I will be glad to give my only copy to
18 the Court.

19 MR. ROCHON: Thank you, Mr. Yalowitz.

20 MR. YALOWITZ: I have also highlighted it in yellow,
21 but given where we are I think the judge can see it. I have
22 not had a chance to get all the way through it.

23 MR. ROCHON: I can tell the Court, in terms of these
24 exhibits, I don't anticipate using them until after lunch. So
25 if we end up with a delay with the jury we can begin with

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1 things that are not among these exhibits for a couple of hours
2 at least.

3 THE COURT: Let me do it this way so then you can give
4 me a more substantive objection.

5 With regard to your letter that I simply exclude these
6 exhibits because the defendants have not produced them in a
7 timely manner in violation of what I ordered, I guess I can
8 characterize it in one or two ways.

9 I am not going to impose a sanction with regard to
10 that alone, a sanction of exclusion. But, frankly, if there is
11 any sanction that I am going to impose in this case, I am going
12 to impose a sanction on both parties for violating the rules
13 that we have set out, and that sanction is going be that I am
14 not going to hear any argument by either side that these things
15 have not been timely produced up to this point.

16 Everybody has violated the rules. There is absolutely
17 no reason why I should be getting these notices in the morning
18 of the testimony fighting about exhibits and having the parties
19 say that they have only seen this exhibit within the last 24
20 hours. Both sides have violated the rule so don't even waste
21 my time anymore about saying I should impose a sanction on the
22 other side because of excluding exhibits at this point based on
23 their violation of the rule.

24 I can assure you that going forward I am going to be
25 particularly strict about this rule. I expect that, one, that

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1 we meet the 72-hour rule, which has been violated. I don't
2 even know if it's ever been complied with. And 72 hours means
3 72 hours, not including the weekend or the holiday. That's
4 what it means.

5 So if I can spell it out for all of you, if there is
6 something you intend to offer -- today is Wednesday -- if there
7 is something you intend to offer on Monday, you better be
8 producing it today. That's the 72-hour rule. It means produce
9 it three days, business days, before you're going to offer it.
10 That's the rule. I thought we understood that that was the
11 rule. It doesn't mean the night before and it doesn't mean on
12 a Saturday night. Forget about 72 hours. I want to know that
13 at least three days, no less than three days before you intend
14 to offer this exhibit before the jury, that the other side
15 knows that is what your intent is. That's the rule. I am not
16 going to say it again. And I want within 24 hours of receiving
17 that notice any objection to those exhibits. For some reason I
18 thought that is what we had agreed upon, but it hasn't
19 happened. So let's put that aside.

20 I will say to you that you should tell me whether you
21 have a substantive objection and what the evidentiary basis is
22 for your objection with regard to these exhibits because that's
23 the only thing that I am going to spend any time on. So if we
24 don't need to address these now, I would like to bring the jury
25 in promptly this morning and not have them sit around.

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1 MR. YALOWITZ: I do need to address the substance of
2 something that happened yesterday and is happening based on
3 these exhibits, your Honor.

4 THE COURT: Is there any reason why we need to address
5 that before cross-examination?

6 MR. YALOWITZ: I think we do.

7 THE COURT: Why?

8 MR. YALOWITZ: Because Mr. Rochon is about to start
9 cross, and he has already injected irrelevant politicization
10 into this case, and he is trying to do it right now with these
11 exhibits.

12 THE COURT: We are not discussing these exhibits.

13 MR. YALOWITZ: We are very clear that generalized
14 mistreatment of Palestinians by Israelis is not coming in, and
15 he should be instructed and admonished not to ask about it.

16 THE COURT: I don't remember a question that he asked
17 about that. Did he ask such a question?

18 MR. YALOWITZ: I believe he did. I believe asking
19 about the IDF occupying Palestinian territory is not relevant
20 to this case.

21 THE COURT: It's not what you just described it as.
22 It's not some testimony about abuse of prisoners or anything
23 like that.

24 MR. YALOWITZ: I think he is trying to get past that
25 line, your Honor. I really do. I see what he is doing this

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1 morning, and I saw what he was doing last night, and I think we
2 need to keep him on a very short leash because he will cross
3 the line. If you let him, he will.

4 MR. ROCHON: I don't like the concept of a leash, but
5 I understand it's just a form of phraseology.

6 THE COURT: Do I need to be concerned about this
7 issue, Mr. Rochon?

8 MR. ROCHON: Not this morning. When we take our break
9 before the afternoon we should address some of those.

10 THE COURT: Do you intend to put evidence in this case
11 of abuses by Israeli security forces?

12 MR. ROCHON: Some of those reports, the two reports
13 you have discuss those issues.

14 THE COURT: You can understand my position has been
15 that that has minimal, if no relevance in this case.

16 MR. ROCHON: I do understand we talked about this
17 previously.

18 THE COURT: I ruled previously. I said that kind of
19 thing is out, right?

20 MR. ROCHON: Yes. I think the reports in question,
21 there may be portions that we talked about whether they need to
22 be redacted. I think the direct examination has opened up some
23 issues that we did not anticipate and each of the parties in
24 this case I think are each saying the other is politicizing the
25 events. I think we should have a discussion about that, but I

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1 don't need to do it now, and I am not going to get into those
2 issues in the first part of the cross-examination.

3 THE COURT: You're not going to ask any questions
4 about abuses by any security forces.

5 MR. ROCHON: I don't anticipate that being part of my
6 examination this morning or this afternoon.

7 THE COURT: I don't anticipate that being part of your
8 examination at all. You lawyers like to talk and find
9 distinctions. Not this morning, not this afternoon, not next
10 week, not next year. I want to be clear.

11 Mr. Yalowitz, please have a seat.

12 MR. ROCHON: That's not going to be part of my
13 examination at all.

14 THE COURT: That's all I want to hear.

15 Mr. Yalowitz, have a seat.

16 MR. ROCHON: I did want to discuss one thing on the
17 72-hour rule. I think cross-examination could be a little bit
18 different.

19 THE COURT: I agree with it. It's all trumped by what
20 you agree to. You always ask me what I want. I want a world
21 without hunger, probably 8-track tapes to come back, and reruns
22 of The Munsters. That's what I want. Otherwise you guys have
23 to decide how to try the case. I am trying to give you the
24 ability to try the case in the manner that you think is
25 appropriate to demonstrate appropriate evidence before the

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1 jury. So you make up your mind what you want to agree to and
2 what agreement you want me to enforce. If that was your
3 agreement, and if that continues to be your agreement, then I
4 will attempt to enforce it for you.

5 But you're right. There is a difference with
6 cross-examination. They don't have the right to have your
7 witness prepped or anticipate or know exactly what you're going
8 to use to impeach him or cross-examine him if you have
9 something. That's not the technical rule. But it is the rule
10 if you agree to it. So you better figure out what it is that
11 you agree to, and if it's different than the rule, tell me what
12 it is if you want me to enforce some other rule other than the
13 standard rule. Things you intend to offer on
14 direct-examination the parties have the right to know, things
15 you intend to use on cross-examination they have a right to see
16 it before you put it before the witness, but they don't
17 necessarily have the right to see it in advance of
18 cross-examination.

19 So if you want to agree to something else, I am going
20 to apply the rules across-the-board going forward, but I am not
21 going to hear any arguments from the parties at this point
22 about how the other side has violated the rule. So let's just
23 move forward. I don't think there is anything we need to
24 address now, unless you tell me that you're going to put this
25 before the jury before the break. Otherwise, if you want me to

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1 make an informed judgment, let me look at the other issues and
2 look at all of the exhibits. I have read the letters, but I
3 have to go through each one of the exhibits to figure out what
4 they are and what the relevance is.

5 MR. ROCHON: If the Court does so, on one of the maps
6 that you have, on the right-hand column, there is some written
7 language that's opinionated.

8 THE COURT: You don't intend to use that and you said
9 that's in your letter. Let's save the time.

10 MR. YALOWITZ: I am ready to go, your Honor. I just
11 want to be clear, anything with a 70 and above, the first day I
12 ever saw from the defendants is today. I just want to be very
13 clear about that.

14 THE COURT: Why don't you be very clear about it
15 later. I don't want to take any more time with the jury.
16 Because sooner or later the jury is going to start holding it
17 against the parties that they have to sit and cool their heels.

18 Let's get the jury and let's proceed. Let's make them
19 think that we are proceeding in an efficient manner sensitive
20 of their time.

21 (Continued on next page)

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(Jury present)

ALON EVIATAR, resumed.

THE COURT: Good morning, ladies and gentlemen.

Mr. Rochon, you may proceed.

MR. ROCHON: Yes, sir.

CROSS-EXAMINATION (Cont'd)

BY MR. ROCHON:

Q. Lieutenant Colonel Eviatar, you did not have any role in investigating the incidents that are on trial here, did you?

MR. YALOWITZ: Object to form.

THE COURT: Could you state that again?

MR. YALOWITZ: Object to form.

Q. Lieutenant Colonel Eviatar, you did not have any role in investigating the incidents that are on trial here, did you?

MR. YALOWITZ: Same objection.

THE COURT: Overruled. He can answer that.

A. That's not correct.

Q. In terms of when these incidents occurred and the prosecution of them, you did not have any role in the investigation and prosecution of any of those incidents, did you?

A. We can break down the question into two. There is investigation and there is prosecution.

Q. At the time from 2000 to 2004, what was your position?

A. I served as the commander of the Jericho district in the

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Eviatar - cross

1 context of my unit.

2 Q. On direct examination you discussed a period of time when
3 you took over a position that had to do with Palestinian
4 affairs, correct?

5 A. That's correct.

6 Q. What year did you take over that position?

7 A. In the year 2001.

8 Q. At what point did you then get promoted to a supervisory
9 position you told this jury about that you had responsibility
10 for Palestinian affairs?

11 A. I dealt with the Palestinian subject on an ongoing basis
12 from 1998.

13 Q. Let me ask you now about specific incidents and specific
14 people.

15 You testified at some length about someone named
16 Marwan Barghouti, correct?

17 A. That's correct.

18 Q. Marwan Barghouti was not convicted of any of the incidents
19 that are on trial here, correct?

20 A. I don't agree with that statement.

21 Q. Sir, Mr. Yalowitz went through with you what Marwan
22 Barghouti was convicted of in your direct examination. Do you
23 recall that?

24 A. We went over Barghouti's conviction in general terms; we
25 didn't go through the various counts.

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Eviatar - cross

1 Q. In none of the counts that he was convicted in was Marwan
2 Barghouti convicted of anything to do with the six incidents
3 that are on trial here, isn't that right?

4 A. I'm very familiar with the details of the terror attack
5 about which I testified. I am not completely familiar with all
6 the details of the other terror attacks.

7 Q. Are you saying to the ladies and gentlemen of the jury that
8 Marwan Barghouti was convicted of any of the incidents that are
9 on trial here?

10 A. I say once again the full details of the conviction of
11 Marwan Barghouti, which pertain to the terror attacks that I am
12 not testifying about, need to be thoroughly examined.

13 Q. Lieutenant Colonel Eviatar, do you understand my question
14 is whether or not Marwan Barghouti was convicted of any of the
15 incidents that are on trial here? Do you understand that
16 question?

17 A. Sir, I understand the question, and I am responding to it.
18 The counts of the conviction that Marwan Barghouti was
19 convicted of, the level of the contact between them and the
20 various incidents that are being discussed here are not part of
21 my testimony.

22 Q. Let me see if I understand your answer.

23 You testified about Marwan Barghouti for quite a
24 while, right?

25 A. Correct.

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Eviatar - cross

1 Q. Mr. Yalowitz showed you Plaintiffs' Exhibit No. 451, which
2 is the verdict in his case, right?

3 A. Correct.

4 Q. And you looked at that and testified about it, correct?

5 A. Correct.

6 Q. It's one of the documents that you told the jury that you
7 had examined so carefully in preparation for your testimony,
8 right?

9 A. Correct.

10 Q. And the truth is that there is not a conviction of Marwan
11 Barghouti for any of the incidents that are on trial in, this
12 case in Plaintiffs' Exhibit No. 451, his conviction, isn't that
13 right?

14 A. I will repeat again, sir. In order to give a yes or no
15 answer to your question, I would have to reexamine the
16 conviction in detail.

17 Q. So as you sit here today, you're telling the ladies and
18 gentlemen of the jury you don't know whether or not Marwan
19 Barghouti was convicted of any of the incidents that are on
20 trial here?

21 A. Sir, all the other terror attacks that will be discussed
22 here in this trial are not under my responsibility here.

23 Q. All right. Sir, you read the conviction of Marwan
24 Barghouti before testifying before these people, didn't you?

25 A. Correct.

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Eviatar - cross

1 Q. You know the incidents that are on trial in this case,
2 don't you?

3 A. The incidents that will be discussed in the trial, I know
4 in general terms only.

5 Q. Sir, you sat through Kaufman's testimony last week, you
6 were in the courtroom for the whole testimony, weren't you?

7 A. Yes.

8 Q. You heard him testify about the incidents that are on trial
9 here, didn't you?

10 A. I heard his testimony.

11 Q. None of the incidents that Kaufman testified about last
12 week are incidents of which Mr. Marwan Barghouti was convicted,
13 isn't that right?

14 A. I don't have a very good recollection of Mr. Kaufman's
15 testimony.

16 Q. Were you sitting in the courtroom for some reason other
17 than listening to him testify last week?

18 A. Sir, I heard Mr. Kaufman's testimony, and I don't recall
19 its details.

20 Q. In fact, you were asked to come here and listen to his
21 testimony by the plaintiffs, weren't you?

22 MR. YALOWITZ: Objection.

23 THE COURT: Overruled.

24 A. I came here as an observer.

25 Q. So last week you were just here as an observer?

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Eviatar - cross

1 A. Yes.

2 Q. Let's talk then about Fuad Shubaki. You would agree with
3 me that Fuad Shubaki was not convicted of any of the incidents
4 that are on trial here, right?

5 A. I know what Fuad Shubaki was convicted of, but I am not
6 familiar with all the details of the terror attacks that will
7 be discussed after my testimony.

8 Q. Sir, are you telling us that you also don't know whether
9 Fuad Shubaki was convicted of any of the incidents that are on
10 trial here?

11 A. I will repeat, sir. I know what Fuad Shubaki was convicted
12 of. Whether or not the details of his conviction pertain to
13 the terror attacks that will be discussed here is something
14 about which I cannot say yes or no.

15 Q. I want to get back to Marwan Barghouti for just one second.

16 On your direct examination, the plaintiffs showed you
17 Plaintiffs' Exhibit No. 1, and that was the payment records for
18 Marwan Barghouti. Do you remember looking at that exhibit when
19 Mr. Yalowitz showed it to you?

20 MR. YALOWITZ: Object to form.

21 THE COURT: Overruled.

22 Q. You see in front of you Plaintiffs' Exhibit No. 1?

23 A. I see it.

24 Q. These are the payment records for Marwan Barghouti?

25 A. Could I have a moment to see the entire document, please?

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Eviatar - cross

1 Q. Sure.

2 MR. ROCHON: May I approach, your Honor?

3 THE COURT: Yes.

4 MR. YALOWITZ: May I have a copy?

5 MR. ROCHON: You do have a copy.

6 Q. Sir, if you would take a look at Plaintiffs' Exhibit No.

7 1 --

8 MR. YALOWITZ: Excuse me, your Honor.

9 THE COURT: Have a seat.

10 Q. That is the document, sir?

11 A. Yes, I believe this is the same document.

12 Q. And you recognize it because Mr. Yalowitz showed it to you
13 on your direct examination, right?

14 A. I think it's the same, yes.

15 Q. All right. If you go to the notes, please, the notes on
16 the first page indicates at the top that this is
17 representatives' awards for the month of June 2002, correct?

18 A. I see the notes.

19 MR. ROCHON: OK. Now I would like to go to page 2, if
20 I could.

21 If you could just highlight the names a bit so the
22 witness can see them.

23 Q. Those are the names of representatives that were elected to
24 the Palestinian Legislative Council, isn't that right?

25 A. I would have to see the heading on the document to see that

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Eviatar - cross

1 this is indeed what is involved.

2 Q. Well, you know that this reflects payments being made to
3 Marwan Barghouti, you told us about that yesterday, right?

4 A. As for Marwan Barghouti, that is correct.

5 Q. And you know that it was payments for his salary as a
6 member of the Palestinian Legislative Council, don't you?

7 A. That's correct.

8 Q. If we go back to the first page, in the note section that
9 we just looked at, it says "representatives' awards for the
10 month of June 2002," doesn't it?

11 A. That's correct.

12 Q. And that reflects that it was a payment to the
13 representatives in the Palestinian Legislative Council, right?

14 A. That makes sense.

15 Q. All right. In fact, you indicated great familiarity with
16 the Palestinian street, Palestinian society, in your direct
17 testimony, that's what you said you had, right?

18 A. Correct.

19 Q. And you know that the people on page 2 of exhibit number 1
20 in fact were representatives of the Palestinian Legislative
21 Council in June of 2002, don't you?

22 A. I didn't testify about these other individuals; I don't
23 know each and every one of them.

24 Q. Do you know whether any of them were representatives of the
25 Palestinian Legislative Council in June of 2002 based on your

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Eviatar - cross

1 great familiarity with the Palestinian street?

2 A. I know Marwan Barghouti. As for the rest, I would have to
3 check each one individually.

4 Q. You're telling us you have no idea, as you sit here right
5 now, whether any of them were in the Palestinian Legislative
6 Council?

7 A. I didn't say I have no idea. I said I'd have to check each
8 name individually in order to give you an authoritative answer.

9 Q. OK.

10 MR. ROCHON: We are done with Exhibit 1.

11 Q. I would like to turn to prisoner payments.

12 You testified at some length with Mr. Yalowitz about
13 payments that are made to Palestinians who are locked up as a
14 result of security offenses, right?

15 A. That is correct.

16 Q. And yesterday we were talking for a little while about the
17 statute or the legislation or the act that authorizes those
18 payments. Do you remember that?

19 A. That is correct, sir.

20 Q. I would like to discuss with you for a few minutes the
21 process by which a person qualifies for those payments. OK?

22 A. Please do.

23 Q. The first step under the legislation is that the prisoner
24 must be certified as a security prisoner by the International
25 Committee of the Red Cross, isn't that right?

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Eviatar - cross

1 A. In order to answer your question, sir, I must see the
2 document in front of me.

3 Q. You don't remember that part?

4 A. I don't recall whether it was the first section as you
5 stated.

6 Q. OK. You recall that it's one of the steps, right?

7 A. I believe so.

8 Q. You would agree with me, wouldn't you, that payments to
9 prisoners were relatively low through 2010?

10 A. I do not agree with that statement.

11 Q. You would agree with me that -- actually, I had the date
12 wrong -- that until 2011 the amounts paid were relatively low?

13 A. I meant that I do not agree with your determination that
14 the sums of money were low.

15 Q. OK.

16 MR. ROCHON: I just need the Court's brief indulgence.
17 I would like to provide to the witness what we have marked as
18 Defendants' 79, but don't bring that up yet. That is the
19 report of the witness.

20 Q. You prepared a report in this case, correct?

21 A. Yes.

22 Q. Would you please bring up the first page of 79?

23 Do you see the first page of Defendants' Exhibit 79
24 there, sir?

25 A. Yes.

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Eviatar - cross

1 Q. That's the first page of your report, isn't it?

2 A. Yes.

3 Q. You're familiar with your report, right?

4 A. Yes.

5 MR. ROCHON: Would you please move to page 28, at the
6 bottom of the page.

7 For the witness, would you highlight the language at
8 the bottom of the page that begins with the word "until."

9 Q. You see the part that is highlighted there?

10 A. Yes, sir.

11 Q. That is from your report, correct?

12 A. That is written in my report, yes.

13 Q. Did you write your report?

14 A. Part of it.

15 Q. You didn't write all of your report? Was some of it fed to
16 you?

17 A. I did not write the report in its entirety. The part that
18 I did not write I examined carefully. I corrected everything
19 that required correction, and I stand behind every word that
20 appears in the report.

21 Q. Do you stand behind the words that say until 2011 the
22 salaries were relatively low about the prisoner payments?

23 A. The intent is that they were relatively low with respect to
24 the salaries that followed.

25 MR. ROCHON: I would move the part that is excerpted

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Eviatar - cross

on page 28 of the report.

MR. YALOWITZ: Your Honor, we need to have the --

THE COURT: Come up.

(Continued on next page)

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Eviatar - cross

(At the sidebar)

THE COURT: I need some guidance from you about how we are going to handle these reports in general. I am not going to take it piecemeal and then fight about each sentence. Are these reports coming in or not coming in?

MR. YALOWITZ: It's got to be the whole report in my opinion if he wants to offer it.

MR. ROCHON: The plaintiffs were referencing the report on direct examination.

THE COURT: That doesn't make it admissible just because you reference it.

MR. ROCHON: If he admits he said it in his report, I will just go by his oral testimony.

THE COURT: You don't intend to offer any portion of his report in evidence?

MR. YALOWITZ: I was operating under the assumption from my side that it's hearsay. So I can't offer it. If the Court has a different rule --

THE COURT: I don't have a different rule. I want to make sure we are all on the same page. You don't intend to offer any of his report. You don't intend to offer any expert's report in evidence.

MR. ROCHON: Expert report, no. I can impeach him with a sentence.

THE COURT: Sure. You just had. The record will

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Eviatar - cross

1 reflect the impeachment that he acknowledges what is in the
2 report. Technically, you shouldn't put it on the screen if
3 it's not in evidence. The portions you want to inquire about,
4 that's fine if you don't have an objection.

5 The bottom line is I am not admitting these reports in
6 evidence. So let's not start coming up here every five minutes
7 trying to figure out whether certain parts get in and other
8 parts get in. If you want to impeach the witness impeach him.
9 If you want to rehabilitate the witness with the report and ask
10 the witness whether he put such a thing in the report, if he
11 denies it and it's in front of him, we will deal with it.

12 MR. ROCHON: I have not yet published it to the jury.
13 It's just on the private screen. Normally, written impeachment
14 you can move that portion in that impeaches.

15 THE COURT: Not necessarily. That's not the rule.
16 The rule is you can ask the witness did he make a prior
17 statement on a prior occasion. If he says yes, the prior
18 statement doesn't come in. It's only to impeach, not
19 substantive evidence.

20 MR. ROCHON: It's not in for the truth. I understand.

21 THE COURT: You can quote from the report and say, did
22 you make this statement? Once the witness acknowledges he
23 makes the statement, that is the evidence and that is the
24 impeachment.

25 (Continued on next page)

F1L8SOK1

Eviatar - cross

(In open court)

BY MR. ROCHON:

Q. Sir, you agree with me in your report it does state, "Until 2011, the salaries were relatively low," right?

A. I again reiterate, with your permission, sir, what I stated previously. The intention here and the context are both important, and I wish to emphasize that before the jury as well. When it states relatively low, the intent is relative to the high salaries that subsequently followed.

Q. Let me just get the first part clear. I understand the explanation.

You agree with me, though, that the report does state what I said it states, which is "until 2011 the salaries were relatively low"? You agree that's what it states? I understand your explanation, but I want to make the record clear that is what it says?

MR. YALOWITZ: Object to form.

THE COURT: Overruled.

A. That is what is written there, and with respect to the context we must recall what I just stated.

Q. Now, sir, the incidents that are on trial here occurred in 2002 through 2004. Are you aware of that?

A. I'm not familiar with the dates of all of the terrorist attacks that will subsequently be discussed.

Q. The one that you discussed related to Hebrew University,

F1L8SOK1

Eviatar - cross

1 what occurred in that period, right?

2 A. That is the terrorist attack that I am testifying about.

3 Q. My question to you was when it occurred. It occurred in
4 that time period, correct?

5 A. Yes.

6 Q. All right. So you would agree with me then what is
7 relevant as to prisoner payments would be the amount of
8 prisoner payments that were roughly contemporaneous with that
9 incident, right?

10 MR. YALOWITZ: Object to form.

11 THE COURT: Why don't you break that down for us
12 simple folks.

13 (Continued on next page)

F11Qsok2

Eviatar - Cross

1 Q. I'm going to make it even simpler. Would you pull up
2 Exhibit 86, please. That's Plaintiff's Exhibit 86. It is
3 already in evidence. This is one of the records you looked at
4 yesterday regarding payments of prisoner benefits, isn't it?

5 A. Correct.

6 Q. If you would go, please, to page 4. So what this reflects
7 as to this individual the record in Plaintiff's Exhibit 86 is
8 the one named Muhammad Odeh, it reflects as of the bottom entry
9 that says 2003 on the left and then to the right the number 3.
10 That is March 2003, right?

11 I'll rephrase it.

12 The bottom left-hand portion of the exhibit, it says
13 2003 in the left column and then right next to it the number 3,
14 right?

15 A. Correct.

16 Q. And that reflects an entry for a payment made in the month
17 of March 2003, right?

18 A. Correct.

19 Q. That reflected the amount of the payment as of March 2003
20 to this individual was 1180 shekels, right?

21 A. Correct.

22 Q. You told us in your earlier examination that, roughly
23 speaking, the exchange rate is 4 to 1 shekels per dollar,
24 right?

25 A. Correct.

F11Qsok2

Eviatar - Cross

1 Q. What this reflects is a payment of about \$250, right?

2 A. I'm no mathematics wiz, but it's almost \$300.

3 Q. Maybe my math is bad. I apologize. 250 would go into a
4 thousand, that's 250. Then 184 and 180. So it's almost \$300,
5 right? You're better at math than I am. So, that's about \$300
6 that this individual's wife received in March of 2003, right?

7 A. \$300? I'm not sure it's to his wife; it's to his family.

8 Q. The name that is there Houda Shahda Odeh, do you see the
9 payee name highlighted?

10 A. I see that's what it says. I don't know if that's his
11 wife. I'd have to check.

12 Q. What I am going to establish is, you recognize that's a
13 woman's name, right?

14 A. Yes.

15 Q. If we could scroll up, you will see that the payments
16 remained at 1180 shekels through June of 2003, correct?

17 A. That's correct.

18 Q. Then they went up to 1480 through the end of that year,
19 correct?

20 A. Correct.

21 Q. And you don't know if that reflects the birth of a child or
22 a raise in the amount of payment or why it went up, right?

23 A. Correct.

24 Q. Then if we continue to the prior page if you would which
25 would be page 3, Justin. Thank you. You will see on page 39,

F11Qsok2

Eviatar - Cross

1 the payments remained at 1700 shekels through the end of 2004,
2 right?

3 A. That's correct.

4 Q. This time let's see if I get it right. That's about \$425,
5 right?

6 A. More or less.

7 Q. If you would go to the next page, please, I guess that's
8 page 2. You will see that the payments remained at 1700
9 through January 2008?

10 A. Correct.

11 Q. And then they went up to 2000 shekels, correct?

12 A. Correct.

13 Q. Then if we could go to the first page. This shows the
14 increase of payments starting in 2011, correct?

15 A. Correct.

16 Q. That pattern of relatively low payments is the same in all
17 of the payment files you looked at with Mr. Yalowitz that the
18 increases come in 2011, right?

19 MR. YALOWITZ: Object to form.

20 THE COURT: Overruled.

21 A. I don't remember the details of every single file that I
22 examined for 2011.

23 Q. But the pattern of increases you actually discussed with
24 Mr. Yalowitz, right?

25 A. I spoke about the pattern of increase. I didn't check in

F11Qsok2

Eviatar - Cross

1 every single one of the reports if the rise was only in 2011,
2 and for each and every one of them.

3 Q. OK. But the reason your report said that until 2011 the
4 salaries were relatively low is because you know that's when
5 the increases happened, right?

6 A. This was one of the occasions that there was to raise the
7 salary. I think, sir, that in the tables that we saw, there
8 were raises in salaries before 2011 as well.

9 Q. Sir, do you agree with me that the major raise in salaries
10 was in 2011 or not?

11 A. There was a raise. I think for different prisoners we saw
12 different rates of raises in other years. In order to give you
13 a certain mathematical answer, I would really need to check
14 each and every one of the tables individually.

15 Q. Well, they were moved in yesterday with Mr. Yalowitz, and
16 the jury can see them at an appropriate time.

17 THE INTERPRETER: I'm sorry, can you repeat? I didn't
18 understand it.

19 MR. ROCHON: I'll withdraw it.

20 Q. If you could bring up 512 for me. Do you remember talking
21 to Mr. Yalowitz about Plaintiff's Exhibit 512?

22 A. If I could see the full exhibit, I think I could give a
23 more complete answer.

24 Q. If you want to scroll through it a bit, Justin, through the
25 second page and the third page, fourth page, fifth page, sixth

F11Qsok2

Eviatar - Cross

1 page, seventh page, eighth page, ninth page, tenth page,
2 eleventh page, one more, one more, one more and yet another
3 page. You recognize this document as the exhibit you looked at
4 with Mr. Yalowitz, right, Plaintiff's Exhibit 512?

5 A. I think it is the one I saw. I always find it more helpful
6 to see the document in Arabic, if I may.

7 Q. Sure. If you could scroll a little bit further, we will
8 show it to the witness in Arabic. If you continue to scroll so
9 the witness can eventually confirm that this is what he looked
10 at.

11 Sir, you had a chance to look at it. That's the
12 exhibit you looked at on direct examination, isn't it?

13 A. Yes, this is the same document. Thank you.

14 Q. I want to ask you a couple of questions. First, Justin if
15 you go to Article 10. I think that article is nine or ten
16 pages in. That's it. Thank you.

17 We talked before about the process by which someone is
18 eligible for these payments and Article 10 is the article that
19 describes the criteria, correct?

20 A. Could I have a moment to look at it, please?

21 Q. Sure. Would it help if you had a paper copy so you could
22 flip to the Arabic?

23 A. Both.

24 Q. I will bring you mine.

25 A. I'd like to see both, the English and the Arabic.

F11Qsok2

Eviatar - Cross

1 Q. I'm going to give you both.

2 A. Thank you.

3 Q. Have you had a chance to look at the Arabic?

4 A. Yes, sir, I see it.

5 Q. Article 10 that is on the screen before the jury describes
6 the evidentiary documents that are necessary for such payments,
7 right?

8 A. That's correct.

9 Q. You described at some length that these payments are only
10 for those who have been convicted of what the document refers
11 to as incarceration resulting from struggle against the
12 occupation, right?

13 A. The term occupation is the term used by the Palistinians.
14 It's not my term.

15 Q. We're talking about this document, and what it refers to is
16 those who were kept in prisons of the occupation for offenses
17 of participating in the struggle against the occupation.
18 That's what it says in Article 1.

19 Justin, go to the first page and show him Article 1.
20 Go to the next page, please, where Article 1 continues, if you
21 don't mind, and then highlight the definition of prisoner which
22 is the second entry on that page.

23 A. Yes, sir, that's what I said earlier. According to the
24 document, they use the term occupation.

25 Q. Yesterday you referenced they paid prisoners for armed

F11Qsok2

Eviatar - Cross

1 struggle against the occupation. Does that say that here?

2 A. I may have said that. I'd have to check the record to see
3 the full quote.

4 Q. You mean what you said yesterday afternoon when I was
5 asking you questions for like ten minutes?

6 A. Yes, sir. You are citing words that I said, and in order
7 for me to be precise in what I say and to give you an accurate
8 answer to your question, I would have to see if that is indeed
9 what I said.

10 Q. OK. So you don't remember yesterday whether you referenced
11 armed struggle as the basis or not?

12 MR. YALOWITZ: Object to form.

13 THE COURT: Overruled.

14 A. I remember using the term armed struggle. I just don't
15 remember whether I associated that with the statute or not.

16 Q. Now, if we could, Justin, go back to Article 10, the one we
17 were on previously with the ICRC. If we could enlarge the
18 first part of it. Thank you.

19 Back to Article 10, the first evidentiary document
20 that a relative must produce is an original certificate from
21 the Red Cross, correct?

22 A. Correct.

23 Q. That's because the international committee of the Red Cross
24 certifies which Palistinians are security prisoners and which
25 are not, correct?

F11Qsok2

Eviatar - Cross

1 A. I don't have the knowledge to confirm what you just asked.

2 Q. You said to this jury that this provision, these provisions
3 for payment of prisoner payments was one of the contributors
4 potentially to terrorist instance, didn't you?

5 A. Correct.

6 Q. The fact that the international committee of the Red Cross
7 is the one that certifies them is not of significance to that
8 analysis to you?

9 A. Sir, the responsibility of that committee and its role and
10 its considerations are not part of the purview of my testimony
11 here.

12 Q. Do you think that the international committee of the Red
13 Cross contributes to terrorism when it certifies who is
14 eligible for prisoner payments?

15 MR. YALOWITZ: Object to form.

16 THE COURT: Overruled. You can answer.

17 A. Sir, I am only referring here to what appears in the
18 statutes.

19 Q. What appears in the statute are the Red Cross documents of
20 detention, right?

21 A. Sir, the section here is just as it is written. I cannot
22 make any commentary on that.

23 Q. Well, after the original certification comes from the Red
24 Cross when someone is first locked up, they actually have to,
25 according to what's written there, renew the certification

F11Qsok2

Eviatar - Cross

1 every three months for the prisoners who are still in
2 detention, and then once a year for the ones who've been
3 sentenced. Isn't that right?

4 A. In order to answer your question, I would like the
5 interpreter to translate that section for me.

6 Q. Would you like to go to the Arabic portion of Article 10?

7 A. I could definitely do so.

8 Q. Why don't you do that, and let us know when your there.

9 A. Of course. That is correct, sir.

10 Q. What is correct? I'll withdraw that, and say what is
11 correct is that the Red Cross needs to renew the certification
12 every three months for prisoners in detention and once a year
13 for the ones who have been sentenced. That's what it says in
14 Arabic and English, right?

15 A. Correct.

16 Q. You told the ladies and gentlemen of the jury in your
17 direct examination last week that the recordkeeping at the
18 Palestinian Authority was reliable, and that they followed
19 these processes accurately, right?

20 A. What I stated in my testimony is that the files that the
21 Palestinian Authority maintains, the ones that I examined,
22 included the documents that appear here.

23 Q. Can I ask you why is it you are able to remember what it is
24 you told Mr. Yalowitz last week and you can't remember what you
25 told me yesterday?

F11Qsok2

Eviatar - Cross

1 A. I can state with certainty that the things that I told
2 Mr. Yalowitz last week, even those I don't remember all of
3 them.

4 Q. So pursuant to this statute, what this means is that every
5 year for every one of the individuals receiving prisoner
6 payments, the international committee of the Red Cross needs to
7 certify them, right?

8 A. What it states here, sir --

9 Q. All right. If we could go to article 3, actually don't go
10 there yesterday?

11 THE COURT: I'm sorry, I don't know if she translated
12 his full answer.

13 MR. ROCHON: I apologize, ma'am.

14 THE COURT: Why don't you finish the answer that you
15 gave.

16 THE WITNESS: Of course.

17 THE COURT: Stop. I'm asking the interpreter. Have
18 you translated everything that he said?

19 THE INTERPRETER: No, your Honor.

20 THE COURT: Translate what he said, first.

21 THE INTERPRETER: Excuse me, your Honor. What --

22 THE COURT: What the witness, said continue that
23 translation.

24 THE INTERPRETER: Yes, your Honor.

25 THE COURT: If he wanted to continue his answer, he

F11Qsok2

Eviatar - Cross

1 can finish his answer.

2 Q. You finished your answer, right?

3 MR. YALOWITZ: No.

4 A. I started my answer.

5 Q. OK. Finish your answer.

6 A. I stated that what's written here according to the statute
7 is that every three months the Red Cross must provide a
8 document for the new prisoners and for those prisoners who have
9 already been tried on a yearly basis.

10 Q. The certifications that are required are in the files. In
11 fact, you saw them, correct?

12 A. I saw what I was provided with.

13 Q. Do you remember Mr. Yalowitz asked you last week in the
14 January 15 transcript Page 504/line 20 through 22:

15 "Q. In your experience do these files actually contain the
16 required documents?"

17 And you answered:

18 "A. Yes, systematically so."

19 Is that right?

20 A. That is correct.

21 Q. I would like to turn to another aspect of the statute.
22 Last week Mr. Yalowitz asked you about released prisoners. Do
23 you remember that?

24 A. That is correct.

25 Q. You told Mr. Yalowitz that the provisions that provided for

F11Qsok2

Eviatar - Cross

1 employment for released prisoners did not include consideration
2 of their income; that they would get that employment no matter
3 how much money they had, whatever job they had, whatever they
4 owned or whatever business they ran. Do you remember telling
5 him that?

6 MR. YALOWITZ: Object to form.

7 THE COURT: I'm not going to sustain the objection.
8 Mr. Rochon, we are going through an interpreter, so it would be
9 easier if you shorten your questions.

10 MR. ROCHON: I appreciate that. I will withdraw the
11 question.

12 Q. You remember testifying about released prisoners last week,
13 right?

14 A. Correct.

15 Q. Do you remember Mr. Yalowitz asked you questions about what
16 the criteria were for people getting released prisoner
17 benefits, right?

18 A. That's right.

19 Q. You told him that there was no means testing for such
20 benefits, correct?

21 A. That's right.

22 Q. If we could go to Article 3 and blow that up. There is
23 another Article 3. For some reason that exhibit has two
24 Article 3's: The one in question is about eight pages in --
25 four pages in. There we go. Thank you.

F11Qsok2

Eviatar - Cross

1 You have that paper document in front of you still,
2 don't you, sir?

3 A. Yes, sir.

4 Q. So you are welcome to look at the Arabic version or the
5 English version that's on the screen, whatever you prefer.

6 A. I see both versions.

7 Q. Highlight paragraph 4. One of the conditions that must be
8 met is that the released prisoner must not work in any official
9 or local organization from which he receives a regular salary,
10 right?

11 A. Correct.

12 Q. Number 5, he must not have any other source of income,
13 whether from business or running a workshop, factory or service
14 office from which he derives an adequate income, correct?

15 A. Just a moment, please. Correct.

16 Q. Number 6, he must not own lands or movable or non-movable
17 properties from which he derives a permanent income that allows
18 him to live honorable, dignified life, correct?

19 A. Correct.

20 Q. So you agree with me, don't you, that in fact last week --
21 I'll withdraw that. You will agree with me that in fact the
22 regulation also of the statute does include means testing for
23 receiving released prisoner benefits?

24 MR. YALOWITZ: Object to form.

25 THE COURT: Overruled. You can answer.

F11Qsok2

Eviatar - Cross

1 A. What I stated is that there is no discrimination among
2 prisoners.

3 Q. I beg your pardon?

4 A. What I stated is that all of the prisoners who meet the
5 criteria receive the benefits, and there is no difference
6 between them, and what doesn't appear here is not examined.

7 Q. When you say "what does not appear here does not get
8 examined, are you suggesting that there is any part of Exhibit
9 512 that you don't have up there?

10 A. What I intend to say is what's written here, this is what I
11 can refer to.

12 Q. Right. You would agree with me that released prisoners are
13 subject to showing that they don't have other income before
14 they can get these benefits, right?

15 MR. YALOWITZ: Object to form.

16 THE COURT: Overruled. You can answer if you
17 understand.

18 A. That's what is written in the statutes.

19 Q. Justin do you have the transcript from January 16 available
20 to you over there? Would you be so kind as to go to page
21 587/line 22?

22 So last week Mr. Yalowitz asked you:

23 "Q. Is there a means test for this guaranteed employment?"

24 And didn't you testify:

25 "A. There is no test of means or economic ability. Even if

F11Qsok2

Eviatar - Cross

1 your family has a successful economic enterprise, a gorgeous
2 house and extensive opportunities for employment, you can rely
3 on this and receive what the Palestinian Authority promises
4 you."

5 Is that what you said last week?

6 A. Yes, that's correct, sir. That is what I stated, and there
7 is no contradiction between the two.

8 Q. Are you able, Justin, to keep that 512 section available to
9 me where we had Article 10.

10 Mr. Eviatar, what I want you to do is look at what's
11 highlighted on the screen where it says: "There is no test of
12 means or economic ability even if your family has a successful
13 enterprise, a gorgeous house and extensive opportunities for
14 employment, you can rely on this and receive what the
15 Palestinian Authority promises you."

16 Now, would you go to that Article 10 again for me,
17 clauses 4, 5 and 6. And that is 512. It's the second Article
18 3 is that what it is. I got my numbers wrong. Justin realizes
19 it.

20 So where it says the released prisoner must not work
21 in any official or local organization from which he receives a
22 regular salary, and he must not have any other source of
23 income, whether from business or running a workshop, factory or
24 service office from which he derives an adequate income. Would
25 you explain to me how your answer is consistent with the

F11Qsok2

Eviatar - Cross

1 statute?

2 A. The answer, as far as I'm concerned -- excuse me -- the
3 explanation as far as I'm concerned, as I said earlier, there
4 is no contradiction. The family can own assets, but they are
5 not in your name. And if the prisoner himself does not own
6 property, he can receive the salary.

7 Q. Finish the quote that is up there for the transcript on the
8 next page. When you said even if he has extensive
9 opportunities for employment, that that too would not
10 disqualify you, is that also consistent with what you say your
11 answer was last week?

12 A. Yes, opportunities for employment doesn't necessarily mean
13 that he's working there.

14 Q. When it says, Lieutenant Colonel Eviatar, "He must not have
15 any other source of income" in the statute, you're saying they
16 would ignore family income?

17 A. I don't know what they write about the family, but I know
18 what the law says.

19 Q. OK. Thank you for your answers on that, Lieutenant Colonel
20 Eviatar.

21 A. You're welcome.

22 Q. So, Lieutenant Colonel Eviatar, I'd like to discuss with
23 you what kind of offense qualifies one as a security prisoner
24 according to the international committee of the Red Cross. You
25 agree with me, don't you, that to be classified as a security

F11Qsok2

Eviatar - Cross

1 prisoner by the international committee of the Red Cross, that
2 it would include things that are not terrorism?

3 MR. YALOWITZ: Objection, your Honor.

4 THE COURT: Overruled. He can answer.

5 MR. YALOWITZ: Your Honor, may I be heard?

6 THE COURT: No. Let's move forward.

7 Q. You would agree -- did you understand the question?

8 THE INTERPRETER: I'll repeat it.

9 A. I'm not familiar with the considerations or criteria of the
10 Red Cross.

11 Q. So you don't know who actually gets classified as a
12 security prisoner so they can actually get these payments?

13 A. I'm not familiar with the considerations of the Red Cross.

14 Q. And, therefore, you can't tell the ladies and gentlemen of
15 the jury what constitutes eligibility for these payments, can
16 you?

17 A. I can relate to it and state that everything that is
18 written in the law as it is specified by the Palestinian
19 Authority, those are the criteria.

20 Q. One of the criteria in the law is the international
21 committee of the Red Cross, right?

22 A. One of the criteria as is stated here is a document or a
23 certificate from the Red Cross.

24 Q. You don't know what offenses make one eligible for that
25 certificate. That's what you're telling us, right?

F11Qsok2

Eviatar - Cross

1 A. I know what the Palestinian Authority determined as it
2 appears here.

3 Q. Sir, you would agree with me that people get these payments
4 for every offense that is deemed to be a security offense. You
5 know that, don't you?

6 A. Everyone that the Palestinian Authority determines to meet
7 the criteria of the law, he will receive the payments.

8 Q. And that would include if someone was arrested for throwing
9 stones at a tank, right?

10 MR. YALOWITZ: Objection.

11 THE COURT: Overruled.

12 A. I don't know what the considerations of the Palestinian
13 Authority are with the exception of what is stated in the law.

14 Q. It would include even if you were convicted only belonging
15 in a prohibited organization, wouldn't it?

16 A. If the Palestinian Authority has determined if, I've
17 understood your question correctly, that that person should
18 receive payments, then he will receive it.

19 Q. Last week you testified that there was a total amount of
20 monthly payments of 17 million shekels as of -- what month was
21 that in 2011 -- what year was that, 2011?

22 A. It was in May 2011.

23 Q. All right. So in May of 2011, you testified that the
24 average monthly payment was 17 million shekels, right?

25 A. The payment for prisoners' salaries.

F11Qsok2

Eviatar - Cross

1 Q. All right. Do you know what the average prisoner's salary
2 was?

3 A. It would have to be checked.

4 Q. Let's use, if we could, bring up Plaintiff's Exhibit 73,
5 please. Do you recognize 73, the front page of it, to be
6 payment records that you looked at yesterday with Mr. Yalowitz?
7 That's Plaintiff's Exhibit 73 for Abdullah Barghouti.

8 A. I think this is indeed that page.

9 Q. If you would go to page 1, please, Justin. That shows
10 payments in 2011 to him of 4,450 shekels a month, right?

11 A. Yes, 4,450 shekels.

12 Q. The amount being paid to him would have been one of the
13 higher amounts given the extraordinarily long sentence he got,
14 right?

15 A. During the following years that he would be in jail, yes.

16 Q. So if we were to take 17 million shekels and divide it by
17 4450. Now we will see who is really good at math. It won't be
18 me. Do you know how many even if that was the average payment
19 how many Palestinian prisoners would that reflect as of
20 May 2011?

21 A. I can't do the math right now. I would just like to
22 emphasize before the jury and in response to your question that
23 the sum of approximately 17 million shekels which was paid for
24 prisoners' salaries was published by the Palestinian Authority.

25 Q. I'm not questioning it. I'm just asking you how many

F11Qsok2

Eviatar - Cross

1 prisoners that must reflect. So if we take 4,450 into
2 17 million, experts have informed me that that would be about
3 3,820 Palestinian prisoners. Does that sound about right to
4 you?

5 A. It makes sense.

6 Q. That is at the highest level of payments because of who
7 we're talking about here, Abdullah Barghouti, right?

8 A. That's not correct. I explained earlier that the payment
9 of salaries is incremental forwards. In 2012, it's less than
10 ten years since he was first imprisoned.

11 Q. I understand. I'll accept your answer then. You agree
12 with me that this reflects at least 3,820 Palistinians that
13 were incarcerated in Israeli prisons for offenses that were
14 labeled as struggle against the occupation in May 2011,
15 correct?

16 A. You were asking a number of questions together. Could you
17 ask a concrete specific question, please?

18 Q. I am just trying to get you to see if you agree with me
19 that this would reflect at least 3,820 Palestinian prisoners as
20 of that date, right?

21 A. No, it doesn't reflect the number of 3,800. You asked me
22 if it makes sense. It could make sense, but I don't know if
23 that is indeed the number of people that were incarcerated in
24 prison.

25 Q. Well, you testified to the 17 million shekel number, right?

F11Qsok2

Eviatar - Cross

1 A. That's correct.

2 Q. You would at least agree with me that it must reflect a
3 very large number of Palestinian prisoners incarcerated related
4 to the struggle against the occupation, right?

5 A. I'm sorry I don't quite understand the question. I
6 apologize.

7 Q. That's OK. How much was being spent on prisoner salaries,
8 prisoner payments, however you want to characterize it, in
9 2000?

10 A. In all?

11 Q. Yes, total.

12 A. I don't have that figure.

13 Q. How about 2001?

14 A. I don't have that figure.

15 Q. Same for 2002, 3 and 4?

16 A. Yes, I don't have the figure.

17 Q. Would you agree with me that you can't be motivated to do
18 something today based on something that hasn't happened yet?

19 MR. YALOWITZ: Objection.

20 THE COURT: I'm going to sustain the objection.

21 MR. ROCHON: Thank you, your Honor. I would like to
22 show you -- your Honor, I don't know when we are going to take
23 a break. I don't need a break.

24 THE COURT: We are going to take a break at 11:30.

25 MR. ROCHON: Then I will do a couple of quick things.

F11Qsok2

Eviatar - Cross

1 Q. I would like to show you, and we will bring them up
2 Exhibits 962 first. Do you remember about being asked about
3 962 yesterday? And if we could go to the next page, which I
4 think would have the Arabic version for the witness. Do you
5 remember being asked questions about that document I was
6 showing you in English and Arabic?

7 A. Yes, sir, I do.

8 Q. Now go to the English version. The three names that are on
9 there who -- as to whom financial aid is being requested, sir,
10 you know that none of those three people were convicted in any
11 of the incidents that we're here on trial on, don't you?

12 A. I know what happened with the first one at least.

13 Q. You know what my question was, don't you? My question was
14 whether any of these three men were convicted for any of the
15 incidents we are here on trial about.

16 A. I repeat, the people who appear in this document -- the
17 person who appears number two, at number 2 here and number 3, I
18 don't know what happened to them.

19 Q. Did you just correct the interpreter's interpretation for
20 us?

21 THE INTERPRETER: No. No. I didn't understand what
22 he said. He mixed up a plural and singular, and so I wasn't
23 sure what he was saying. He didn't correct me.

24 Q. Sir, you do know that none of these three were convicted in
25 any of the incidents that we're on trial here. Don't you know

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Eviatar - Cross

1 that?

2 A. I will reiterate my previous response.

3 Q. OK. If we could go to 963. Before we highlight any
4 portion of it, let's make sure we give the Arabic version to
5 the witness, please. I've got the Arabic version in front of
6 the witness.

7 What the document says is -- I'll read it in English.
8 "Kindly allocate a sum of \$2,000 will for each of the
9 following" -- actually leave up the Arabic, please.

10 MR. YALOWITZ: Objection.

11 THE COURT: To having him highlight the Arabic?

12 MR. YALOWITZ: No, to the question.

13 THE COURT: I'm not sure what the question is. What's
14 the question?

15 MR. ROCHON: I haven't asked one yet.

16 THE COURT: Let's hear your question.

17 Q. What this says is, "Kindly allocate the sum of \$2,000 for
18 each of the following struggling brothers." Isn't that what it
19 says?

20 A. It says warriors.

21 Q. Isn't the word munadilin. I'll spell it.

22 M-U-N-A-D-I-L-I-N.

23 Isn't that the word -- isn't that the Arabic word
24 there that you are referring to as saying warriors?

25 A. Yes.

F11Qsok2

Eviatar - Cross

1 Q. Doesn't that word mean strugglers, plural for struggle?

2 A. Yes, but the practical meaning of the word is the struggle
3 against Israel.

4 Q. So it does not say warrior; it says strugglers, right?

5 A. It says strugglers, but the context is very, very
6 important.

7 Q. There is actually an Arabic word for warriors, isn't there?

8 A. Correct.

9 Q. Would you please pronounce it for the ladies and gentlemen
10 of the jury, and then we'll spell it phonetically for our court
11 reporter.

12 A. In Arabic?

13 Q. Yes. Just pronounce the word in Arabic for warrior.

14 A. Mujahid.

15 Q. And that word is not in that document, is it?

16 A. That's correct.

17 Q. Now, could you go to the English version of the document
18 please? Justin, would you highlight the line that begins
19 "kindly."

20 So, if I were to read this with a literal translation,
21 it would not say, "Kindly allocate a number sum of \$2,000 for
22 each of the following warrior brothers," it would say, "kindly
23 allocate a sum of \$2,000 for each of the following struggling
24 brothers," right?

25 A. The term struggling, as I stated earlier, is in the context

F11Qsok2

Eviatar - Cross

of the struggle against Israel.

Q. Thank you.

THE COURT: Take a break?

MR. ROCHON: That would be great, your Honor.

THE COURT: Ladies and gentlemen, take a ten minute break. Don't discuss the case. Keep an open mind. I'll see you in ten minutes.

(Jury excused)

THE COURT: Let's take a short recess.

(Recess)

(Continued on next page)

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(Jury not present)

THE COURT: I want to see if we can quickly resolve the exhibits that are going to be used on cross-examination.

Mr. Yalowitz, do you have a substantive objection to these exhibits?

MR. YALOWITZ: I do, your Honor.

THE COURT: I have eight exhibits. The first one is 71. Do you have an objection to that?

MR. YALOWITZ: I do not object to 71 on substance. If we are going to be letting in exhibits that I have never seen until during trial, I have a couple that I would like to review.

THE COURT: I know you do because you have already done it.

MR. YALOWITZ: You have kept them out.

THE COURT: I haven't kept them all out.

We are past that point, Mr. Yalowitz, right now.

I told you I am not going to exclude any of the exhibits on a timeliness basis. So give me the substance of what you say you have an objection to.

MR. YALOWITZ: I will do that, your Honor. There is one that I want to talk about at another time.

THE COURT: I assume we are going to use these with this witness.

So 71 you don't have a substantive objection to.

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1 MR. YALOWITZ: I do not.

2 THE COURT: 72 do you have substantive objection to?

3 MR. YALOWITZ: I do not.

4 THE COURT: What about 73?

5 MR. YALOWITZ: I do not.

6 THE COURT: What about 74?

7 MR. YALOWITZ: I do not.

8 THE COURT: What about 75?

9 MR. YALOWITZ: I do.

10 THE COURT: What about 76?

11 MR. YALOWITZ: I do.

12 THE COURT: What about 29?

13 MR. YALOWITZ: I do.

14 THE COURT: What about 70?

15 MR. YALOWITZ: I do.

16 THE COURT: So the photos you don't have any problem
17 with. You have problems with the maps.

18 MR. YALOWITZ: Yes.

19 THE COURT: What is your substantive objection to each
20 one of them?

21 MR. YALOWITZ: My substantive objection to the maps is
22 that -- well, I don't know. I haven't had a chance to look at
23 them.

24 THE COURT: I assume you recognize these as Israel and
25 the Palestinian territory because they are very similar to the

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1 maps that you put in evidence.

2 MR. YALOWITZ: One says Occupied West Bank. I thought
3 we weren't politicizing the case.

4 THE COURT: Is that your objection, because it says
5 Occupied West Bank?

6 MR. YALOWITZ: That's right. It's got this
7 inflammatory red.

8 THE COURT: Why is that red inflammatory?

9 MR. YALOWITZ: It looks to me like it's designed to
10 show something bad.

11 THE COURT: As opposed to inflammatory yellow? What
12 is the difference between yellow and red? You don't like red
13 as a color?

14 MR. YALOWITZ: I don't think it's a neutral color when
15 it's a map of Israel.

16 THE COURT: What color do you think should be used,
17 blue?

18 MR. YALOWITZ: Blue would be fine.

19 THE COURT: You have got to give me a more substantive
20 argument than that, that you don't like the color.

21 MR. YALOWITZ: I don't like the colors and commentary.
22 I have no idea whether the shapes are accurate. I have never
23 seen it until today.

24 THE COURT: Well, that's not a substantive objection.

25 MR. YALOWITZ: How can I make a substantive objection?

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1 I have been in court all day.

2 THE COURT: You made an objection. I want to know
3 whether you have a substantive objection. You see it now. If
4 you don't have a substantive objection, I want to know it. If
5 you do, tell me.

6 MR. YALOWITZ: I don't have a basis to know whether
7 the shapes on the map are fair and accurate representations. I
8 don't know whether they are fair and accurate. I haven't had
9 an opportunity to consult anybody.

10 THE COURT: It's the same shape as your map.

11 MR. YALOWITZ: These pictures of area A, are we
12 looking at 75 or 76?

13 THE COURT: 76.

14 MR. YALOWITZ: So it's got pictures of area A which
15 are in a different color.

16 THE COURT: You don't believe that's an accurate
17 description of those areas?

18 MR. YALOWITZ: It might be. It might not be.

19 THE COURT: You have been with this case for ten
20 years. You shouldn't have to guess as to whether you think
21 this is accurate assessment of this area.

22 MR. YALOWITZ: May I consult?

23 THE COURT: I am not going to waste a lot of time on
24 this. Tell me if you have got a real objection. I am tired of
25 playing games with these exhibits. Tell me what it is you

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1 object to and give me something that makes sense to everybody
2 in this room why it shouldn't be in. And the color red is not
3 a particularly compelling objection to anybody in this room.
4 Give me a better argument than that.

5 MR. YALOWITZ: This was handed to me --

6 THE COURT: I don't want to hear that. I know when it
7 has been handed to you. Do you presently at this time have a
8 substantive objection?

9 MR. YALOWITZ: I need to consult.

10 THE COURT: You don't presently at this time have a
11 substantive objection you can articulate, is that correct?

12 MR. YALOWITZ: My problem is --

13 THE COURT: Is that correct?

14 MR. YALOWITZ: No, sir.

15 THE COURT: No, sir, it's not correct, or it is
16 correct?

17 MR. YALOWITZ: I don't have complete information.

18 THE COURT: So you don't at this point have a
19 substantive objection, other than the color, and you're not
20 sure whether or not the areas represented on the map are
21 accurate, different colored areas, as they are described. Your
22 lack of knowledge is what you're using as your objection, not
23 any knowledge that there is something untrue or unduly
24 prejudicial to your client.

25 MR. YALOWITZ: Correct.

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1 THE COURT: How much time do you want to look at that?

2 MR. YALOWITZ: 30 seconds.

3 THE COURT: You can have more than that.

4 Are we going to get to this before lunch?

5 MR. ROCHON: I can hold off if that's helpful to Mr.

6 Yalowitz.

7 THE COURT: At this point do you have a substantive
8 objection to the first map? It says Oslo 2 1995. I assume
9 that is supposed to mean that's what the parties agreed to were
10 going to be the areas when they entered into the Oslo Accords.
11 I don't know that. I am guessing.

12 MR. YALOWITZ: I need about 30 seconds to check this
13 one too.

14 THE COURT: You can have more than 30 seconds, but I
15 need a substantive objection.

16 MR. YALOWITZ: I just want to know if it's accurate.
17 Standing here I am not equipped to say that.

18 THE COURT: You can take the next few hours to
19 determine that, even if you have to consult somebody. I want
20 to hear substantive objections.

21 MR. YALOWITZ: I understand.

22 THE COURT: Now, you said you object to 29 and 70.

23 MR. YALOWITZ: You have my only copy of 29. I had it
24 for about five minutes before we walked in.

25 THE COURT: I have highlighting on this copy. Is that

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1 your highlighting?

2 MR. YALOWITZ: That's my highlighting.

3 THE COURT: Just summarize for me what your objection
4 is.

5 MR. YALOWITZ: My objection is that this document is
6 replete with critiques about how Israel supposedly treated
7 Palestinians badly of a very generalized nature. I don't think
8 it's relevant. I think it's highly prejudicial. I think it's
9 directly contrary to the ruling that the Court has made
10 repeatedly.

11 THE COURT: And this is a report by a certain UN
12 committee?

13 MR. YALOWITZ: It's a report of a UN committee that
14 has been shown in other places to be unreliable.

15 THE COURT: Which committee?

16 MR. YALOWITZ: It's called Committee on the Exercise
17 of the Inalienable Rights of the Palestinian People. It's a
18 committee set up to criticize the State of Israel.

19 THE COURT: I understand the nature of that objection.
20 What about the State Department?

21 MR. YALOWITZ: The State Department is also of dubious
22 relevance and is also replete with information, allegations of
23 generalized mistreatment that is inappropriate in light of the
24 Court's earlier ruling. For example --

25 THE COURT: You don't have to give me an example. I

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1 just want to see if Mr. Rochon -- it's going to be his burden
2 to convince me otherwise.

3 Does this have any other purpose other than, as I say,
4 throwing mud at Israel? What is the purpose of a report that
5 is on human rights practices of Israel?

6 MR. ROCHON: Your Honor, I think it is relevant, the
7 portions of the report, and the reason it's relevant is because
8 the plaintiffs have put into evidence U.S. government reports,
9 four of them, over my objection, saying that they were going to
10 create a problem criticizing this case that heavily critiqued
11 my client in a host of areas.

12 THE COURT: So you just want to do that back at them.
13 What is the relevance for the jury's determination of the facts
14 in this case? It's kind of difficult for you to argue this is
15 relevant because you made a very strong argument that it wasn't
16 relevant.

17 MR. ROCHON: But I lost.

18 THE COURT: That doesn't make this relevant either.

19 MR. ROCHON: Once I lose on evidence that I think is
20 irrelevant in the case, then I have to counter.

21 THE COURT: Then you have to put in more irrelevant
22 information? That's not the way it works.

23 MR. ROCHON: If this is more irrelevant
24 information --

25 THE COURT: Do you want it for anything other than to

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1 demonstrate the human rights violations of the Israeli
2 government?

3 MR. ROCHON: Yes.

4 THE COURT: What else does this demonstrate?

5 MR. ROCHON: These reports characterize what the
6 occupation actually was. There has been testimony about it
7 introduced over my objection. There is information in here
8 about the Palestinian prisoners.

9 THE COURT: What relevant information to the jury in
10 this case?

11 MR. ROCHON: I think the information about the
12 occupation itself is relevant.

13 THE COURT: What relevant information in this report
14 that they don't already have that you are trying to contradict
15 in terms of some other evidence?

16 MR. ROCHON: The plaintiffs through their witness are
17 putting in question even whether there was an occupation.

18 THE COURT: You think we are going to debate that
19 here?

20 MR. ROCHON: I didn't want to debate it.

21 THE COURT: We are not going to debate it.

22 MR. ROCHON: Now I am getting a one-sided debate.

23 THE COURT: I don't understand the one-sided debate
24 you say that is out there.

25 MR. ROCHON: The one-sided debate is that I have

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1 reports from one branch of the United States government heavily
2 criticizing my client for its behavior during the Second
3 Intifada and saying that that client engaged in unreasonable
4 behavior.

5 THE COURT: I understand your argument.

6 MR. ROCHON: I have a report here from the State
7 Department that indicates that in fact it was an occupation.
8 That fact alone is something the plaintiffs --

9 THE COURT: That's not the issue and that's not why it
10 was admitted in evidence. The issue was whether or not the PLO
11 or Palestinian Authority was either complicit or people were
12 committing terrorist acts on their behalf and whether they were
13 acting in that regard, taking actions consistent with the
14 actions that they promised to take in relationship to
15 terrorism. That's the relevance of this. Trying to show on
16 the other side that you want to throw mud at the Israeli
17 government does not counter that position.

18 I am going to exclude 29, and I am going to exclude
19 30. They have absolutely no relevance and no place in this
20 trial.

21 MR. ROCHON: The Court said 30.

22 THE COURT: I misspoke. 29 and 70.

23 MR. ROCHON: These are important to the defense. The
24 government reports came in late in this man's examination.
25 They are extremely damaging to my client.

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1 THE COURT: These don't address any of those issues.

2 MR. ROCHON: They do.

3 THE COURT: Which issue?

4 MR. ROCHON: For instance, there is going to be
5 testimony about martyr payments. There already has been some.
6 In this report they talk about the policies of demolitions.

7 THE COURT: What does that have to do with martyr
8 payments?

9 MR. ROCHON: Because the martyr payments help families
10 recover from the practices of demolishing homes.

11 THE COURT: You want to ask the witness that?

12 MR. ROCHON: I don't need a witness because I have got
13 a report that says it.

14 THE COURT: You do need a witness because you don't
15 have this report. It is more prejudicial than probative. It
16 is unduly prejudicial. You are doing exactly what I said you
17 cannot do. You cannot simply say, oh, the Israelis are bad
18 guys because they bulldozed my house, and therefore that has
19 some relevance to the jury's determination of whether the PA or
20 the PLO was complicit in terrorism. Even you would hope the
21 jury didn't make that analysis. That would be an unreasonable
22 analysis for them to undergo.

23 MR. ROCHON: I feel that the jury, as a result of the
24 arguments of counsel, the use of U.S. government reports
25 already, and the IDF reports which are --

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1 THE COURT: If you have some other government reports
2 that have to do with the Palestinian Authority or the PLO being
3 found to being complicit in terrorism or found not to be
4 involved in terrorism, then I will hear you. Israel is not on
5 trial. OK? I am going to say that one time. Israel is not a
6 party to this litigation. So I don't care how good or bad, how
7 appropriate or inappropriate the Israeli actions were because
8 it's not relevant to the jury's determination. And even you
9 would say to the jury that don't use that to try to determine
10 whether or not my clients were complicit in terrorism. It is
11 not a basis for them to do that. It is an illegitimate basis
12 for them to do that. And, no, you don't get to put in
13 something that you think is bad about Israel because you think
14 they put in something that's bad about the Palestinian
15 Authority. It has nothing to do with the substantive issue.

16 MR. ROCHON: The United Nations report goes
17 particularly to activities of the IDF. The IDF reports are a
18 critical part of the plaintiffs' case here.

19 THE COURT: So it criticizes the IDF. How does that
20 make it more or less likely that your clients were involved in
21 terrorism? Quite frankly, it gives them more incentive to
22 being involved in terrorism.

23 MR. ROCHON: It goes to the bias of the evidence
24 introduced by virtue of public record and through testimony.

25 THE COURT: I think you can effectively establish that

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1 bias, if you think one exists, and that bias does not exist in
2 the UN and it does not exist in the State Department. For
3 purposes of this trial it is irrelevant. So those two
4 documents are not going to be admitted for any purpose in this
5 trial.

6 With regard to the photos, he does have an objection,
7 but he doesn't have a substantive objection to the photo so I
8 will let you put in the photos. If they don't want to object
9 fine, but I am not quite sure of the relevance of a picture of
10 Yasser Arafat with Nelson Mandela. If you want it in, that's
11 fine. I am not going to go beyond that. But I will hear Mr.
12 Yalowitz before we get to the maps, and he will tell me
13 specifically what he says is inaccurate about the map and
14 prejudicial about the map. If he can articulate something, I
15 will hear the objection. If he cannot articulate something
16 after lunch, then that will be admitted into evidence. So at
17 this point you can anticipate that at this point I am excluding
18 Exhibit 29 and Exhibit 70.

19 Let's get the jury.

20 MR. YALOWITZ: Thank you, your Honor.

21 (Continued on next page)
22
23
24
25

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Eviatar - cross

(Jury present)

ALON EVIATAR, resumed.

THE COURT: Mr. Rochon, you may continue.

MR. ROCHON: Thank you, your Honor.

If we could please bring up Plaintiffs' Exhibit 1052.

BY MR. ROCHON:

Q. Do you remember Mr. Yalowitz asking you questions about Plaintiffs' Exhibit 1052 last week?

A. Yes.

Q. This gentleman who wrote the report that you testified about that is 1052, his name is Dr. Manuel Sarkis Hassassian, right?

You can read his name on the page.

A. I see his name, yes.

Q. This report that is Plaintiffs' Exhibit 1052 concerns Fatah, that's what the report concerns, right?

A. This page that I see here before me deals with the Fatah, that's right.

Q. This person, doctor, whose last name I can't pronounce, he is not even in Fatah, is he?

A. I don't know if he is a member or not.

Q. Last week you testified that you knew him and you had met him, right?

A. That's right.

Q. But you don't know if he is even in Fatah, the organization

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Eviatar - cross

1 that this thing is about?

2 A. I'm not sure whether he is a member of the Fatah. I really
3 don't know what to answer you, but that can be checked.

4 Q. If you don't know, just say you don't know.

5 A. That's what I said. I don't know whether he is a member or
6 not.

7 MR. ROCHON: Plaintiffs' 171, please.

8 Q. You're aware, aren't you, sir, that there are numerous
9 different political parties within the PLO, right?

10 A. Correct.

11 Q. Last week you testified about Plaintiffs' Exhibit 171,
12 right?

13 A. That's right.

14 Q. That's a PASSIA directory, correct?

15 A. That's right.

16 Q. And you said that it was a reliable source of information,
17 PASSIA, correct?

18 A. That's correct.

19 Q. This directory lists those leaders of both the PLO
20 executive committee and the various ministers, correct?

21 A. That's right.

22 MR. ROCHON: If we could, please, go to the media
23 department, which is toward the left hand towards the bottom.

24 Q. This person Yasser Abed Rabbo, who is the PLO head of the
25 media department, that person is not in Fatah, correct? He is

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Eviatar - cross

1 in the democratic front for the liberation of Palestinian,
2 right?

3 A. He is not a member of the Fatah. With respect to the
4 popular front, which you just noted, I have to check before I
5 can state that.

6 Q. Fair enough.

7 For our purposes, it's sufficient that he is not in
8 Fatah?

9 A. That's right.

10 Q. The point is Fatah is the largest party in the PLO, right?

11 A. That's right.

12 Q. But there are multiple other parties, and representatives
13 of them are leaders in the PLO as well, correct?

14 MR. YALOWITZ: Object to form.

15 THE COURT: Overruled.

16 A. That's right.

17 MR. ROCHON: If we can go to the full exhibit, the
18 first full page.

19 Q. I realize the font is small. I will go through it
20 relatively quickly, but if you want to see anything highlighted
21 you tell me.

22 MR. ROCHON: Can I come up to the witness with a paper
23 copy?

24 THE COURT: Yes.

25 Q. I will provide you with a paper copy of Plaintiffs' 171.

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Eviatar - cross

1 The head of the economic department there, that
2 individual is also not in the Fatah or a party, correct?

3 A. I think that he is not; however, I am not certain.

4 Q. Then, as far as the head of the social affairs department,
5 Hanna Amirah, also not in Fatah, correct?

6 A. I think that he is not either.

7 Q. Then as to the other PLO executive committee members, I am
8 going to read off their names.

9 First, Dr. Samir Ghosheh, not in Fatah, correct?

10 A. I believe that he is not.

11 Q. Ali Ishaq, not in Fatah, correct?

12 A. I'm not familiar with his name.

13 Q. Dr. Emil Jarjoul, not in Fatah, correct?

14 A. That's right.

15 Q. Taysir Khalid, not in Fatah?

16 A. That's right.

17 Q. Riad Khodari, not in Fatah, right?

18 A. I'm not familiar with him.

19 MR. ROCHON: If you could go to the next column.

20 Q. Moving up to the right side, Abdel Rahim Malouh, not in
21 Fatah, correct?

22 A. That's right.

23 Q. And Ghassan Shaka'a, also not in Fatah, correct?

24 A. To the best of my recollection, with respect to Shaka'a, I
25 think that he was a member of the Fatah for a certain period of

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Eviatar - cross

1 time and then left, something like that.

2 Q. Thank you, sir.

3 That means of the members of the PLO executive
4 committee, of which there were one, two, three, four, five,
5 six, seven, eight, nine listed in the PASSIA directory, at
6 least six, and maybe seven, are not in Fatah, right?

7 A. Out of the nine that appear there. But the executive
8 committee of the PLO includes, I think, twice as many as nine.

9 Q. Well, let's go to the PASSIA directory that you said was
10 reliable and who is listed as being the PLO executive
11 committee.

12 If you look at page 9 in the bottom right-hand corner,
13 it lists a total of one, two, three, four, five, six, seven,
14 eight, nine members, correct?

15 A. What is written here, nine appear.

16 Q. Bottom line, you would agree with me the PLO and Fatah are
17 two different things, right?

18 A. I do not agree.

19 Q. You say the PLO and Fatah are the same thing?

20 A. I'm saying what I have stated up until this point. The
21 head of the PLO is the head of Fatah. There are areas in which
22 there is a common denominator or overlap. And I also said that
23 in 1969, the Fatah took control over the PLO, and it is still a
24 movement that is larger than the other movements in the PLO,
25 etc., etc.

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Eviatar - cross

1 Q. So you would agree with me that the Palestinian Authority
2 and the PLO are different from each other, they are two
3 different things, right?

4 A. With respect to that as well, I do not agree.

5 Q. The Palestinian Authority is a government, the PLO is a
6 political party or movement, correct?

7 A. Not correct.

8 Q. The Palestinian Authority is the government that governs,
9 in the West Bank and Gaza, since the accords with Israel,
10 right?

11 A. That's correct, the Palestinian Authority is the government
12 in the West Bank.

13 Q. Of its ministers, as of the PASSIA directory in 2004, of
14 the roughly 20 or 24 ministers, whatever the number was, many
15 of them were not in Fatah, right?

16 A. I don't know if many would be the right word here. I must
17 review all of them and give you an exact answer how many of
18 them precisely.

19 Q. Let me come to you, if you would like then, with the PASSIA
20 directory that you used on direct examination and ask you.

21 Let's start with one of the most important. If we go
22 to page 15 in the lower right-hand corner, please, where it
23 says ministry of finance in the lower part of the page. The
24 head of the ministry of finance was Salam Fayyad, who was an
25 independent, not in Fatah, correct?

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Eviatar - cross

1 MR. YALOWITZ: Object to form.

2 THE COURT: Overruled. You can answer.

3 A. That's correct.

4 Q. In addition, and if you need to look at the exhibit tell
5 me, but Jamil Tarifi, the head of civil affairs, not in Fatah,
6 correct?

7 If you would like me to direct you to the particular
8 entry I will.

9 A. Yes, please.

10 Q. This is page 14, upper left-hand side.

11 The ministry of civil affairs was headed by Jamil
12 Tarifi, also not in Fatah, independent?

13 A. That's right. I think that's right.

14 Q. Ministry of labor, and I think this will be on page 17,
15 left side, sort of toward the top, was Ghassan Al-Khatib, also
16 not Fatah?

17 A. Correct.

18 Q. The ministry of planning -- next page, left side -- Nabil
19 Kassis, also not Fatah, independent, correct?

20 A. I think that's correct.

21 Q. And ministry of public works -- same page, bottom left --
22 Abdul Rahman Hamad, also not Fatah, independent, correct?

23 A. I think that's correct.

24 Q. And the ministry of tourism and antiquities, named Miri Abu
25 Alta, also not Fatah, also independent, correct?

F1L8SOK3

Eviatar - cross

1 A. That's correct.

2 Q. Finally, the ministry of women's affairs -- upper
3 right-hand corner, same page -- also not Fatah, correct?

4 A. About her, I don't know.

5 Q. You would agree with me that a substantial number of the
6 ministers, including of important ministries, are not Fatah,
7 correct?

8 A. Yes. It's true that a substantial number of the ministers
9 are not members of Fatah.

10 Q. If we can go to Exhibit 537. This is already in evidence.

11 Do you recall Exhibit 537, that's the designation of
12 the Al Aqsa Martyrs Brigade as an FTO by the United States of
13 America, correct?

14 A. Yes.

15 Q. The United States of America has not designated the
16 Palestinian Authority as such, has it?

17 A. That's correct.

18 Q. The United States of America has not designated the PLO as
19 such, has it?

20 A. That's correct.

21 Q. The United States of America has not even designated Fatah
22 as such, has it?

23 A. That's correct.

24 Q. Therefore, that would suggest that the United States of
25 America can tell the difference between the Al Aqsa Martyrs

F1L8SOK3

Eviatar - cross

1 Brigade and these three other organizations, right?

2 A. I don't agree with that statement.

3 Q. You testified on direct examination about Yasser Arafat a
4 bit. Do you remember that?

5 A. Yes.

6 Q. You suggested to the jury that the way he tied his head
7 garb had some special significance about his view of Israel.
8 Do you remember telling them that?

9 A. Correct.

10 Q. In fact, Yasser Arafat has worn that same head garb, in
11 that same style, for long before the period that's called the
12 Second Intifada, correct?

13 A. That's correct.

14 Q. If we could go to 71 in the selection, and we will go
15 through these relatively quickly.

16 You know what Exhibit 71 is, correct?

17 A. Of course.

18 Q. That's Yasser Arafat with President Bill Clinton. And who
19 is the man on the left?

20 A. Yitzhak Rabin.

21 Q. He was a leader of Israel?

22 A. He was the prime minister.

23 Q. Go to 72.

24 Again, we have President Clinton, Yasser Arafat, and
25 the man on the left?

F1L8SOK3

Eviatar - cross

1 A. Ehud Barak, the prime minister.

2 Q. If we can go to 73.

3 Yasser Arafat and Nelson Mandela, right?

4 A. Yes.

5 Q. Wearing his headgear in exactly the way you say suggests
6 some kind of view of Israel?

7 A. That's correct.

8 Q. 74. You know what this is, right?

9 A. Yes.

10 Q. Tell the ladies and gentlemen of the jury who is the man in
11 the middle?

12 A. Shimon Peres.

13 Q. Leader of Israel?

14 A. Correct.

15 Q. What was his position?

16 A. At the time, I believe he was the foreign minister.

17 Q. And on the left Yasser Arafat?

18 A. Correct.

19 Q. Wearing his headgear in the same way he always wore it?

20 A. Correct.

21 Q. That's the photo of those three individuals receiving the
22 Nobel Peace Prize, correct?

23 A. Correct.

24 Q. You are actually not suggesting that this jury should reach
25 any conclusions about my client because of the way the man wore

F1L8SOK3

Eviatar - cross

1 his headgear, are you?

2 A. I described Arafat as a man of symbols. Since the time he
3 became a Palestinian leader and the way he tied his headgear,
4 as Palestinians have told me, indeed reflects his approach
5 towards Israel as it has always been.

6 Q. And that approach that he had towards Israel, you're saying
7 he had that approach when he was standing there with -- was
8 that the prime minister at the time or president in 74?

9 MR. YALOWITZ: Object to the form.

10 THE COURT: Overruled. He can answer.

11 A. His approach, as I represented it, did not change; it
12 wasn't different from 2000, 1990, or before that.

13 MR. ROCHON: I am done with the photographs. Thank
14 you.

15 Q. Sir, yesterday, when we began your examination, we talked
16 about how you first became a witness in this case?

17 A. Correct.

18 Q. And we discussed that you had retired in April of 2000 --
19 what year?

20 A. I will reiterate it. In April 2013, I ended my service,
21 and I was officially discharged one year later.

22 Q. You were contacted within a month of that retirement,
23 correct, to be a witness in this case?

24 A. That's correct.

25 Q. Actually, when you first became a witness, you did not

F1L8SOK3

Eviatar - cross

1 write from start to finish the report you eventually submitted,
2 did you?

3 A. That's correct.

4 Q. You were actually handed a report that someone else had
5 written named Roni Shaked?

6 A. I received a draft, that's correct.

7 Q. Well, that draft report that you received and your final
8 report are essentially identical, aren't they?

9 A. They are similar.

10 Q. Well, he had 90 pages, you had 88, right?

11 A. 88 in English.

12 Q. He had 176 footnotes, you had 178 footnotes, right?

13 A. I don't remember exactly how many footnotes he had, but
14 that sounds about right.

15 Q. In fact, when you signed your report, when you first signed
16 your report, you actually included language in the report that
17 you signed that stated, "While I have not personally been
18 involved in the interrogation of terrorists, I am familiar with
19 such interrogations from, *inter alia*, my work at the Israeli
20 security agency."

21 A. I remember that wording. I remember also that there was a
22 technical error, that we took care to amend, in which it stated
23 that I did not work with the Israeli security agency.

24 (Continued on next page)

F11Qsok4

Eviatar - Cross

1 Q. Understood. The first version of your report included
2 something that had been copied from his that said: "My work at
3 the Israeli security agency," when, in fact, you never worked
4 there, right?

5 A. That's correct. As I said earlier, that was a technical
6 mistake in the writing.

7 Q. Justin, would you pull up the corrected report for me,
8 please? For the witness, would you please highlight at the
9 bottom of Page 1 the sentence that begins "in that position."
10 Then, if you are able to, go to the next page, please, page 2,
11 and also highlight the paragraph that begins "in the course of
12 my services." Thank you very much.

13 Now, sir, do you see in front of me the two paragraphs
14 that my colleague has highlighted?

15 A. Yes, I do.

16 Q. Did you write those?

17 A. Yes, I did.

18 Q. You signed your report in May of 2013, correct?

19 A. I think it was June.

20 Q. June 14, 2013, thank you. Does that sound right?

21 A. Yes.

22 Q. Correct.

23 MR. ROCHON: Your Honor, I would like to move those
24 two paragraphs in, if I could, or at least preserve them for
25 use with a subsequent witness.

F11Qsok4

Eviatar - Cross

1 MR. YALOWITZ: Objection.

2 THE COURT: I'm sorry, do you want to --

3 MR. ROCHON: Here is what I'd like to do --

4 THE COURT: Are you doing something with this witness
5 now?

6 MR. ROCHON: What I'd like to do is have those two
7 excerpts marked as an exhibit.

8 THE COURT: Let's not address that now unless you're
9 dealing with it with this witness. If you want to ask this
10 witness questions about that, exhaust that, and then we'll deal
11 with the evidence.

12 MR. ROCHON: I ask the excerpt be marked 79A.

13 THE COURT: I'm not going to do that now. Do your
14 examination now. We'll discuss it after the jurors leave.

15 MR. ROCHON: Thank you. Fair enough. I'm done with
16 that portion.

17 Q. Sir, you talked about some of your interactions with
18 Palestinian people in your direct examination as well, correct?

19 A. Correct.

20 Q. When you moved through the West Bank, you moved through it
21 in a military jeep, right?

22 A. Not always.

23 Q. But in an identified military vehicle of whatever sort:
24 jeep, tank, whatever it was.

25 A. In most cases.

F11Qsok4

Eviatar - Cross

1 Q. You traveled in the uniform of the IDF in which you are now
2 a lieutenant colonel and you were then an officer, right?

3 A. Correct.

4 Q. When you met with people, you did so in your capacity as a
5 member of the Israeli Army, right?

6 A. That's correct.

7 Q. For instance, you said you met with Jabril Rajoub one day
8 when he was coming across from Raman Jordan, right?

9 A. Correct.

10 Q. The reason you met with him is that he couldn't get into
11 the West Bank without going through you first, right?

12 MR. YALOWITZ: Objection.

13 THE COURT: Overruled. You can answer.

14 A. That's not why I met him, and he didn't have to meet me.

15 Q. You would agree with me that the Israeli Defense Forces is
16 the vehicle by which the Palestinian territories or occupation
17 is maintained, correct?

18 MR. YALOWITZ: Objection.

19 THE COURT: Sustained as to the form.

20 Q. Sir, you also testified about some Israeli Defense Forces
21 reports that were prepared that Mr. Yalowitz showed you. Do
22 you remember those?

23 A. Yes.

24 Q. During the period in question, 2002, 3 and 4, without
25 getting into the substance of any criticisms, Israel's

F11Qsok4

Eviatar - Cross

1 occupation was being criticized in the public media?

2 MR. YALOWITZ: Objection.

3 THE COURT: Sustained.

4 MR. ROCHON: Your Honor, could we approach?

5 THE COURT: No, sir.

6 Q. Sir, you would agree with me that the reporting of the
7 IDF -- do you know who Ephraim Levy is?

8 A. You mean Ephraim Levine.

9 Q. Dr. Ephraim Levy from the Palestinian section of the
10 military intelligence directors's office of the Israeli Army.
11 You know what that is, right?

12 A. I know him.

13 Q. And you know Dr. Matty Steinberg?

14 A. I know him.

15 Q. He was an adviser to the Shin Bet?

16 A. Correct.

17 Q. You're aware that those individuals were in a position to
18 be familiar with the work done by the IDF and the incursions in
19 2002 that generated those reports that you testified about in
20 direct examination weren't you?

21 A. I'm sorry, I don't understand the question.

22 Q. Those two individuals are familiar with the work that was
23 done by the IDF in connection with the incursions in 2002 that
24 resulted in those reports, right?

25 A. I think they are familiar.

F11Qsok4

Eviatar - Cross

1 Q. Isn't it a fact that the IDF's role in connection with the
2 reporting they did was to use propaganda in order to affect
3 policy?

4 MR. YALOWITZ: Objection.

5 THE COURT: Sustained.

6 MR. ROCHON: Your Honor, may I approach on -- I had
7 another question, but I don't want to run it by --

8 THE COURT: Let's take the lunch break. Ladies and
9 gentlemen, I'm trying to be a little tough on the lawyers about
10 using our time efficiently I'm trying to coordinate. Don't
11 hold it against them I'm trying to keep us on schedule and move
12 forward. We will take a break now and deal with any issues we
13 have to address. Don't discuss the case. Keep an open mind.
14 We will see you back here at 2:00.

15 (Jury excused)

16 (Continued on next page)

F11Qsok4

Eviatar - Cross

1 (Jury not present)

2 MR. ROCHON: Your Honor, may we discuss the issue?

3 THE COURT: Just a second.

4 MR. YALOWITZ: May I be heard, your Honor?

5 THE COURT: Let me hear Mr. Rochon.

6 MR. ROCHON: May the witness be excused while we
7 discuss the issue?

8 MR. YALOWITZ: I don't think that's necessary, your
9 Honor.

10 MR. ROCHON: I defer to the Court.

11 THE COURT: He can stay if you want to cross-examine
12 him about whether he was in the room. The bottom line I don't
13 need a whole lot of discussion on this issue if I know where
14 we're going unless you can tell me that you have something that
15 was relevant to the issues that were raised. If you're simply
16 attempting to elicit some mistreatment by the IDF, then
17 obviously you are violating both the letter and the spirit of
18 the ruling that I just gave you. We are not going there.

19 MR. ROCHON: I'm not.

20 THE COURT: Your last question was particularly
21 inadmissible as a question and as an answer, all right? If he
22 had answered that question. He's not here to -- propaganda is
23 not within his expertise, nor is it within yours. So I suggest
24 that you stay far afield of those kinds of questions. That is
25 not relevant to this jury's determination. Where do you want

F11Qsok4

Eviatar - Cross

1 to go? What leeway do you want me to give you?

2 MR. ROCHON: Here is where I'd like to go and here's
3 the leeway I'd like. The witness has not only been a vehicle
4 to introduce the idea of report study, he has vouched for the
5 people that created them for the integrity.

6 THE COURT: No. He said they're accurate reports.

7 MR. ROCHON: He says far more --

8 THE COURT: If you want to dispute that you, can ask
9 him questions about whether or not there is something that
10 makes them inaccurate reports, not their motivation to do them.

11 MR. ROCHON: If I could, the witness vouched for them.
12 He's here as an expert allowed to give opinions not as a fact
13 witness. It's proper cross-examination of an expert to present
14 contrary views of other people in his field?

15 THE COURT: About relevant issues.

16 MR. ROCHON: And the relevant --

17 THE COURT: What is the relevant issue that you want
18 to contradict?

19 MR. ROCHON: The people who he just admitted had
20 reason to be familiar with the incursions that produced these
21 reports have written -- and I was just going to ask him the
22 views -- "We also see that Israeli intelligence had not a scrap
23 of evidence indicating Arafat had abandoned the negotiating
24 tract and" --

25 THE COURT: Is that in some document you want to

F11Qsok4

Eviatar - Cross

1 question him about or admit into evidence?

2 MR. ROCHON: I was going to question him about the
3 views of those people. I have a good faith basis for it from
4 the document.

5 THE COURT: What is the view that you think is
6 relevant that somehow casts doubt on some evidence that is
7 presented?

8 MR. ROCHON: Well, the plaintiffs have presented these
9 reports with the suggestion that Arafat was behind the
10 terrorists.

11 THE COURT: And you're saying that those reports don't
12 support that?

13 MR. ROCHON: I'm saying that his peers have written
14 that the Israeli intelligence had not a scrap of evidence
15 indicating that Arafat and abandoned the negotiating" --

16 THE COURT: Who wrote it and who wrote it where?

17 MR. ROCHON: Ephraim Levy and Maddie Steinberg the two
18 people I just referenced.

19 THE COURT: What do they have to do with this case?

20 MR. ROCHON: He just testified, Dr. Levy he actually
21 had the position of --

22 THE COURT: I know what he testified what their
23 position is. What do they have to do with this case?

24 As you say to me, you've effectively cross-examined
25 him. What does that have to do with the six attacks at issue

F11Qsok4

Eviatar - Cross

1 in this case?

2 MR. ROCHON: If the Court hadn't included them?

3 THE COURT: No, tell me what they have to do --

4 MR. ROCHON: It undermines those IDF reports that
5 plaintiffs relied on so heavily and the people who created
6 them.

7 THE COURT: Which IDF reports? All IDF reports, is
8 that what you are you saying? Or do you have something that
9 they commented on in a particular report.

10 MR. ROCHON: It undermines 831, 829, 631, 626 and 826.

11 THE COURT: Why is it appropriate for you to put their
12 opinions before this jury in the form of a question for this
13 witness.

14 MR. ROCHON: Because it's proper cross-examination of
15 an expert to provide him contrary views of others with a basis
16 to know. It's proper cross.

17 THE COURT: What was the contract contrary view that
18 he had that you say conflicts with his view.

19 MR. ROCHON: He vouched for those reports.

20 THE COURT: He didn't vouch for the report. He didn't
21 use that word, "I vouch for the report." He says that these
22 are reports done. I know how reports are done, and they're
23 usually done appropriately and following the right procedures
24 and that's the best I can give you about these reports."

25 MR. ROCHON: So these reports that have come in, the

F11Qsok4

Eviatar - Cross

1 ones I just listed, none of them discuss any of those six
2 instances. What they do is describe generally is supposed
3 support for terrorism.

4 The reports were according to people who are in a
5 position to know, part of a propaganda effort.

6 THE COURT: How would they know it's part of a
7 propaganda effort?

8 MR. ROCHON: Because they work in the very unit that
9 created them.

10 THE COURT: Well, you're in your firm. It doesn't
11 mean if somebody steals something out of somebody's desk
12 drawer, that you know about it. I don't understand how you
13 connect these people with any of these incidents or even any of
14 the report. Is any one of those people commenting on any one
15 of these reports that went into evidence?

16 MR. ROCHON: They comment on the overall behavior of
17 the IDF for that period in connection with those incursions.

18 THE COURT: Go ahead.

19 MR. ROCHON: When I talk about him vouching, so I
20 realized -- I apologize for reading the transcript to the
21 Court.

22 THE COURT: I have a clear recollection of what he
23 said.

24 MR. ROCHON: He said they asked that the document
25 reflect a reliable degree of professionalism and integrity in

F11Qsok4

Eviatar - Cross

1 the facts and analysis.

2 "Absolutely yes. The parties that distributed the
3 document is the same intelligence" and he goes on. They
4 brought in integrity. Propaganda doesn't have integrity.

5 THE COURT: You're saying it's propaganda because
6 somebody else who is not in this court said it was propoganda
7 and you want to put that before the jury.

8 MR. ROCHON: As cross-examination of an expert, I
9 think that's entirely proper.

10 THE COURT: I understand your argument. I'm not going
11 to allow it.

12 MR. ROCHON: I understand the Court's ruling. May I
13 mark as Defendant's Exhibit identification only not the what
14 the jury viewed for the record, the document on which I was
15 relying for questions. We'll have to give it a number and we
16 will figure it out as we go along.

17 THE COURT: Let's go ahead.

18 Do you have something you would like to address,
19 Mr. Yalowitz?

20 MR. YALOWITZ: My problem is, I thought the Court's
21 ruling was very clear. I didn't think we were going to have
22 questions about propoganda, occupation.

23 THE COURT: I don't need speeches, Mr. Yalowitz. We
24 resolved this issue. Let's move forward. I'm trying to keep
25 us on schedule.

F11Qsok4

Eviatar - Cross

MR. YALOWITZ: I ask the Court admonish Mr. Rochon.

THE COURT: I just did.

MR. YALOWITZ: In front of the jury.

THE COURT: In the most forceful way I thought was appropriate, and I don't think it's appropriate to admonish him any further. I don't have any basis to believe he did not in good faith ask that question believing it was admissible and proper even though I determined that it is not.

MR. YALOWITZ: Thank you, your Honor.

THE COURT: Let's take the lunch break. I have a couple of matters to handle.

MR. ROCHON: Thank you, your Honor.

(Luncheon recess)

AFTERNOON SESSION

2:00 P.M.

(In open court)

THE COURT: Are we ready to proceed or is there anything we need to address before we bring out the jury.

MR. YALOWITZ: Your Honor, I've had a chance to look at Exhibit 75 and 76. I have no problem with 75, other than the fact that it was given to me while the trial was going on. If we are going to start having exhibits while the trial is going on, I have one or two I might want.

76 I have no problem with the shape of the map, the images on the map. I will withdraw my objection to the color

F11Qsok4

Eviatar - Cross

1 of the map. The only thing is there is some commentary in the
2 map in the written language that needs to be redacted

3 THE COURT: What is that?

4 MR. YALOWITZ: Number one, there's a legend, and at
5 the bottom of the legend, it says Green Line Preoccupation
6 Border. I think that should be redacted.

7 THE COURT: Where is that? I see Green Line.

8 MR. YALOWITZ: Green Line is fine. We've heard what
9 the Green Line is.

10 1967 preoccupation border should be redacted.

11 THE COURT: If that is redacted, are you otherwise
12 satisfied?

13 MR. YALOWITZ: I have three other redactions, and I'll
14 be satisfied.

15 Number two, the facts on Palestinian security
16 controlled areas, area A, all those fact should be redacted

17 MR. ROCHON: I already said I wasn't using those.

18 MR. YALOWITZ: Number three, there are two places on
19 the map where it says occupied. Occupied West Bank. Occupied
20 Gaza Strip. Those should be redacted.

21 THE COURT: Is that somehow inconsistent with this as
22 described by anyone?

23 MR. YALOWITZ: Yes, there is a whole -- there is
24 endless debate about whose land it is, whether it's occupied,
25 whether it is not occupied. That debate is not relevant to the

F11Qsok4

Eviatar - Cross

1 case. To start injecting it's occupied or no, it's not
2 occupied.

3 THE COURT: Didn't we hear testimony from witnesses
4 who described it as the occupied territory.

5 MR. YALOWITZ: We've had questions from Mr. Rochon and
6 an opening from Mr. Rochon and that's what he calls it. But
7 this witness -- I know this witness doesn't agree with that.

8 THE COURT: Let me hear from Mr. Rochon. What do you
9 want me to do with it?

10 MR. ROCHON: So 75 is fine, as I understand it. As to
11 76, the upper right key where it says Green Line, there's
12 already been testimony about the Green Line what it is and
13 where it is. I don't see that as being prejudicial and there
14 is no need to redact it. I think the only thing that should be
15 redacted is Palistinian controlled areas and underneath that
16 including, of course, through the footnote which begins "Since
17 2000," none of that will be shown to the jury --

18 THE COURT: Whose map is this?

19 MR. ROCHON: This map is produced by the Negotiation
20 Support Unit of the Palestinian Authority or the PLO.

21 THE COURT: So this is --

22 MR. ROCHON: This is prepared, I think it would be
23 fair to say, by somebody affiliated with the defense.

24 THE COURT: Well, that may be important to put before
25 the jury if I am going to give them this map. I understand

F11Qsok4

Eviatar - Cross

1 their position with regard to the occupied territory. If you
2 want to make a representation -- go ahead.

3 MR. ROCHON: I don't need 76.

4 THE COURT: Then let's not debate as we say the
5 politics of it.

6 MR. ROCHON: That's fine.

7 THE COURT: Let's move forward. When do you think we
8 are going to get to the next witness?

9 MR. ROCHON: I think I'm only an hour now.

10 MR. YALOWITZ: I don't think I have more than a half
11 hour.

12 THE COURT: I know there will probably be some
13 redirect, but we have some issues that I think need to be
14 addressed before we get to this next witness. We can address
15 them during the next break as soon as this witness is finished
16 or before we start with the next witness, as a matter of fact,
17 because you may have to make some redactions.

18 I hate to do this to the jury, but let me see if I can
19 resolve some of these issues. We have exhibits with the next
20 witness. Let me tell you what my position is based on this and
21 then I have a couple quick questions.

22 Defense objected to a number of exhibits. I will
23 start with the summary. My position is this: If there is -- I
24 don't think I have a copy of that summary chart. I do have a
25 copy of that summary chart. I have it attached.

F11Qsok4

Eviatar - Cross

1 MR. YALOWITZ: Right, and we went over the summary
2 chart back in maybe December.

3 THE COURT: Let me just tell you what my position is
4 and then if we need to debate about it, we can do it further.

5 I don't have any problems with the caption page
6 promotions to defendants' employees. If defense feels that's
7 inaccurate, then you can question the witness who prepared the
8 document or other witnesses utilizing the document, and you can
9 point out in what way that is not accurate; but if that is the
10 witness' conclusions based on witness' review of the evidence
11 before this jury, then I think you can appropriately point out
12 that to the extent it is accurate, it is an accurate reflection
13 of what are the true facts in evidence before the jury.

14 The same thing with the Marwan Barghouti listed as one
15 of defendant's employees. I think if that is an issue whether
16 these are improperly listed and it's inconsistent with the
17 evidence the jury has before them, it is at risk for
18 cross-examination. An inaccurate chart doesn't make a chart
19 inadmissible. That is basically my position, as long as it is
20 supposedly based on that witness' review of the evidence that
21 is before the jury. If he's got it wrong, I'm sure you'll
22 point it out.

23 The same thing with Ali Ja'ara being listed as a PA
24 employee. As a matter of fact, I don't think the defense is
25 saying he wasn't a PA employee. They're saying he was

F11Qsok4

Eviatar - Cross

1 terminated at a certain point in time. I don't think they
2 characterize him as a PA employee because he was terminated on
3 January 5, 2004.

4 Six of the individuals are listed as being currently
5 employed by the PA or with the PA. The defense takes issue
6 with that. If that's not accurate, then the defense can point
7 that out to the jury, and further call into question the
8 accuracy of the witness' summary chart and the accuracy of the
9 witness' testimony.

10 Quite frankly, I think the objection there is that
11 they are listed as being currently employed with the PA and the
12 only objection is that they are currently incarcerated by the
13 state of Israel. That's a debate between the parties as to
14 whether that makes him still an employee of the PA or not.
15 That's not a basis for an objection.

16 I do agree with the defendants about the note at the
17 bottom of the summary. I think that is an inappropriate note.
18 I think that is an inappropriate comment for this witness to
19 make or for any witness or any person who has prepared this
20 chart about the defendants. So that should be redacted. If
21 you want to agree with the defendants and you want to state it
22 a different way as to whether or not this chart accurately has
23 all the complete information, timely information, up to a
24 certain date, if you want to give some more neutral assessment
25 of that, then you can. But the comment that you have at the

F11Qsok4

Eviatar - Cross

1 bottom, I agree with the defendant that that is an
2 inappropriate comment for the witness to make either as a
3 statement or as testimony before the jury or in the form of the
4 witness' chart. I am not even sure the evidence is going to be
5 this witness is the one who prepared the chart.

6 The caption defendants payment to the convicted
7 non-employees is inaccurate. If it is inaccurate, the defense
8 can point out where there are errors or inaccuracies.

9 I thought with regard to the photographs, the crime
10 scene photographs, I thought these two photographs were already
11 in. In fact, I know I've seen them before.

12 MR. HILL: You previously ruled on our objections that
13 they were irrelevant and more prejudicial than probative.

14 THE COURT: These two photos?

15 MR. HILL: Yes, sir. The objection here is that there
16 is not a witness with personal knowledge --

17 THE COURT: I thought I did not rule inadmissible
18 these two photographs if they are the photographs that I see
19 attached here. One is a photograph of the scene without any
20 individuals in it. It's supposed to show the aftermath of a
21 bombing. If you tell me that I ruled they were out, then --

22 MR. HILL: No, you had not excluded them on relevance
23 grounds.

24 THE COURT: I don't think I excluded them at all.

25 MR. HILL: My objection is foundation grounds.

F11Qsok4

Eviatar - Cross

1 THE COURT: But you say I excluded them already. I
2 don't think that is true. I think my ruling was just the
3 opposite. Maybe this is just similar to another photo I saw.
4 I don't remember the exhibit.

5 MR. ROCHON: Judge, we're not saying you ruled them
6 out. You may have misunderstood Mr. Hill. We are saying you
7 had allowed them but hadn't addressed this objection.

8 THE COURT: I know. Well, I ruled. I thought I said
9 that you gave me a bunch of photos. This was among them. I
10 identified certain photographs that would be excluded. This
11 was not one of them.

12 MR. HILL: Correct.

13 THE COURT: By default this was one of the ones that
14 we anticipated it was going to come in. Now you're renewing
15 your objection?

16 MR. HILL: I'm making a different objection. I'm
17 objecting on foundation that the witness does not have personal
18 knowledge to identify the photograph, say that it accurately
19 depicts what he claims it is. That's the objection.

20 THE COURT: What did we do with the other photographs?
21 Did we put in all the other photos at this point?

22 MR. YALOWITZ: Yesterday the defendant stipulated
23 their admission.

24 THE COURT: So you're not doing that with this photo.

25 MR. ROCHON: That's because they had a witness who

F11Qsok4

Eviatar - Cross

1 could foundationalize those photographs. They don't for these
2 photos.

3 THE COURT: I don't understand what the difference
4 between this photo is and all the photos that --

5 MR. HILL: They're different events.

6 THE COURT: Different events?

7 MR. HILL: Yes, sir. They had a witness who could
8 foundationalize the photographs of the Hebrew University
9 bombing. They do not have a witness who could foundationalize
10 these photo.

11 THE COURT: This is not the Hebrew University bombing.
12 This is not among those group of photos?

13 MR. ROCHON: Correct. The plaintiffs have represented
14 to me it's the January 22, 2002 shooting. I don't have any
15 personal knowledge of that, and I don't think any witness who
16 is going to come in and testify will.

17 THE COURT: Which one is 407?

18 MR. YALOWITZ: 407 is the bus stop.

19 THE COURT: I saw thought I saw these two photographs.

20 MR. YALOWITZ: 407 is the bus stop, the bus stop which
21 was January 22. 1134 is the bombing that the Sokolow family
22 was in. Frankly, I don't get it. Both of these families, they
23 got blown up or they got shot. They passed out. I can't put
24 the survivor on the stand and say: Did you take this
25 photograph?

F11Qsok4

Eviatar - Cross

1 THE COURT: No, it doesn't matter. I couldn't care
2 less who took the photograph. That's not the foundation. I
3 need somebody to tell me it is what it purports to be. That's
4 all I need. Somebody who has knowledge and basis for
5 knowledge--

6 MR. HILL: Personal knowledge.

7 THE COURT: Doesn't necessarily have to be personal
8 knowledge, but they have to have some basis to be able to say
9 that this is what it purports to be. Are these part of the
10 photographs that the expert was given to examine?

11 MR. HILL: No, sir, they're not.

12 THE COURT: That's what I'm trying to say.

13 MR. HILL: They're not in the man's report. I didn't
14 get a chance to depose him about his personal knowledge of this
15 information.

16 THE COURT: Does he have a basis to lay a foundation
17 for these photographs?

18 MR. YALOWITZ: Of course he does.

19 THE COURT: Now you say of course he does. What is
20 the basis?

21 MR. YALOWITZ: He's looked at the photographs. He's
22 been to the place. He's looked at where we got them. He will
23 be able too say, yes, this is a fair representation of the
24 scene on that day.

25 THE COURT: How would he know that?

F11Qsok4

Eviatar - Cross

1 MR. YALOWITZ: Because he's been in the place, so he
2 recognized Jaffa Road, and he has either looked at or -- I want
3 to check, but these were pulled off of websites dedicated to
4 events like this to say here is a picture of this place, here
5 is a picture of this place.

6 THE COURT: That doesn't make it real.

7 MR. YALOWITZ: I understand that, but that's fair
8 cross-examination.

9 THE COURT: I'm not going to rule on it at this point.
10 We will see what kind of objection, what kind of foundation you
11 lay. If you lay a proper foundation for it, I'll let it in.
12 That was my only issue. I thought we already addressed this.
13 Apparently not.

14 Also, the alleged perpetrator photographs. I thought
15 some of these the jury already saw. Is that true or not?

16 MR. HILL: The particular ones that are objected to
17 here have not yet been introduced into evidence.

18 THE COURT: I thought I saw 1172. Where did I see
19 that? I thought I saw it up there. I didn't see it up there?

20 MR. HILL: He may have put it up in opening. It's not
21 in evidence.

22 THE COURT: I know I saw it somewhere, and I know the
23 jury's seen them.

24 MR. HILL: He put something up in opening that he
25 anticipates will come into evidence. Now is the time to have

F11Qsok4

Eviatar - Cross

1 him lay a foundation for it.

2 THE COURT: As I say, I had two questions. You
3 answered the first, your ground for objection.

4 MR. HILL: Is foundation.

5 THE COURT: My second one is, what is your reason for
6 objection?

7 MR. HILL: Because it's more prejudicial to my client
8 if it comes in.

9 THE COURT: Why is it more prejudicial to your client?

10 MR. HILL: Because they're going to claim that that
11 person is responsible for injuring the Sokolow family.

12 THE COURT: And you're going to claim this person is
13 not?

14 MR. HILL: No. I'm objecting to the photo because he
15 can't foundationalize it.

16 THE COURT: Do you have somebody who can identify the
17 photograph and who the people are --

18 MR. YALOWITZ: Yes, sir.

19 THE COURT: -- and a legitimate basis to do so, then
20 it will come in. If you don't lay a proper foundation, I'm
21 putting it aside, and you can bring in the next witness who can
22 do it.

23 MR. YALOWITZ: Understood.

24 THE COURT: The last one is the Palestinian Authority
25 financed Fatah branch activities. This document was not in the

F11Qsok4

Eviatar - Cross

1 binder that I was given. I know because I know 554 is in
2 there.

3 MR. YALOWITZ: Right.

4 THE COURT: What is this and where does it come from?

5 MR. YALOWITZ: It's similar to the other five. I
6 think we just omitted it from the binder inadvertently.

7 THE COURT: Where does it come from? Who generated
8 it?

9 MR. YALOWITZ: I believe it's IDF. I don't have it in
10 front of me.

11 THE COURT: You'd better tell me because what you
12 believe doesn't get it in evidence.

13 MR. YALOWITZ: I'm pretty sure it's IDF, but I'll
14 double check. I don't want to tell you something that's not
15 correct.

16 THE COURT: Is there some reason we're discussing it
17 now on the day this witness is supposed to testify? As you
18 have scolded them for, I'm sure we're not in a position that
19 you only showed this to them and told them just last night that
20 you were going to utilize this with this witness. That would
21 be in violation of the rule that you want me to enforce.

22 MR. YALOWITZ: Right. Yes.

23 Your Honor, until this morning the rule was 72 hours
24 for witnesses which everybody has abided by; mainly me, and day
25 before on exhibits. Day before.

F11Qsok4

Eviatar - Cross

1 THE COURT: When did you tell them that you were going
2 to utilize this with this witness?

3 MR. YALOWITZ: Day before. Yesterday.

4 THE COURT: When?

5 MR. YALOWITZ: After court last night.

6 THE COURT: When?

7 MR. YALOWITZ: I have --

8 THE COURT: Midnight?

9 MR. YALOWITZ: No. No. No.

10 THE COURT: You would agree with me that would be a
11 little bit unreasonable, wouldn't it?

12 MR. YALOWITZ: Midnight would be too late. 8:02 p.m.
13 We are not going to use it today.

14 THE COURT: Are you going to use it at all?

15 MR. YALOWITZ: I would like to use it.

16 THE COURT: With whom?

17 MR. YALOWITZ: With Shrenzel.

18 THE COURT: What is it and who is going to identify
19 it?

20 MR. YALOWITZ: Shrenzel is going to identify it.

21 THE COURT: As what?

22 MR. YALOWITZ: As an IDF-produced report. Like the
23 ones we talked about, it's got --

24 THE COURT: Where did it come from?

25 MR. YALOWITZ: It came from the IDF.

F11Qsok4

Eviatar - Cross

1 THE COURT: Meaning what? How did you get it from the
2 IDF? The others I understood were seized in a raid. That's
3 the evidence that I have as part of this foundation. This is
4 not seized in that same raid?

5 MR. YALOWITZ: These documents are also seized
6 documents and analysis of the seized documents.

7 THE COURT: You say "these documents," I'm talking
8 about one document, 553. Where did 553 come from?

9 MR. YALOWITZ: 553 is an analysis.

10 THE COURT: Where did it come from?

11 MR. YALOWITZ: It came from the IDF.

12 THE COURT: How did the IDF get it?

13 MR. YALOWITZ: They created it. They wrote it. So
14 it's a government report.

15 THE COURT: So this is an IDF report?

16 MR. YALOWITZ: Right.

17 THE COURT: Where did you get it from?

18 MR. YALOWITZ: We got it from the IDF.

19 THE COURT: Did Shrenzel get this from the IDF?

20 MR. YALOWITZ: I don't think Shrenzel went and got it
21 from the IDF, but he's going to testify --

22 THE COURT: We will come back to that one because I
23 might not allow this. I will look at it more carefully.

24 MR. YALOWITZ: We will be guided by your Honor on
25 that.

F11Qsok4

Eviatar - Cross

1 THE COURT: We have all these other documents. I
2 still don't understand why -- it should have been in the other
3 binder. We could have resolved this.

4 MR. YALOWITZ: Yes, and it was an oversight on my
5 part, and your Honor will be guided accordingly.

6 THE COURT: Let's continue.

7 MR. YALOWITZ: All right. But just to be clear --
8 whatever, OK.

9 THE COURT: When you keep saying "just to be clear,"
10 it's usually you muddied the water. Usually it was already
11 clear before you say "just to be clear." I understand what you
12 say. I follow you pretty good.

13 MR. YALOWITZ: I know you do. I follow you pretty
14 good too, sir.

15 THE COURT: All right. So let's get the jury in here
16 and let's get this moving.

17 (Continued on next page)
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F11Qsok4

Eviatar - Cross

(Jury present)

THE COURT: Be seated. Mr. Rochon, you can proceed.

MR. ROCHON: Thank you, your Honor.

First a housekeeping matter. I believe this morning's session I used. But did not move in Defendant's Exhibit 71, 72, 73 and 74. I would move those. Those were the photographs, your Honor.

THE COURT: They will be admitted into evidence.

MR. ROCHON: Thank you.

(Defendant's Exhibits 71, 72, 73 and 74 received in evidence)

Q. This morning I asked you, Lieutenant Colonel Eviatar, about being first contacted to be a witness in this case. Now I would like to ask you the name of the person who first contacted you to be a witness in this case was a gentleman named Arie Spitz, correct?

A. Arie Spitz contacted me, and he generally asked me, he said to me in a very general way, he spoke to me about the matter.

Q. And Arie Spitz used to be one of your commanding officers in the Israeli Defense Forces, correct?

A. That's right.

Q. At the time that he contacted you to be a potential witness in this case, he was working for a law firm that assists the plaintiffs in this case, correct?

F11Qsok4

Eviatar - Cross

1 A. I don't know how exactly to define the nature of his work.

2 Q. He had an affiliation of some sort with a law firm that is
3 assisting the plaintiffs in this case, correct?

4 A. He had an affiliation with it. I don't know to say exactly
5 what the nature of that affiliation was.

6 Q. Understood. And only for the sake of clarity, I'm not
7 referring to the law firm here at the counsel table. It's a
8 law firm in Israel, correct?

9 A. That's right.

10 If I may add, please, I see the report here before me
11 that you asked me about previously, and there is an updated
12 version here -- an updated copy here as I noted to you that the
13 sentence that says "I worked for the Israel security agency," I
14 noted that it had been fixed and it was simply written as a
15 technical error. And, in fact, the sentence that I referred to
16 as having been erased or removed is in fact removed in this
17 report.

18 Q. Lieutenant Colonel Eviatar, I didn't ask you any question
19 about that report just now, did I?

20 A. That's right.

21 Q. That's just something you came back from lunch and you
22 thought you wanted to tell me and the ladies and gentlemen of
23 the jury?

24 A. No. I simply came back here to the witness stand, and I
25 saw here the updated and the amended report.

F11Qsok4

Eviatar - Cross

1 Q. Do you mean during lunch someone put a document up there,
2 an updated and amended report in front of you?

3 A. I came back to my chair, and I see that here before me now.

4 Q. And it happened to be turned to that very page?

5 A. No. The entire report in its entirety was here.

6 Q. But it happened to be turned to that very page that was
7 just turned right now before you picked it up?

8 A. No, I opened it up myself.

9 Q. So that report wasn't there when I went to lunch, was it?

10 A. That's right.

11 Q. So I didn't give it to you, and none of these people gave
12 it to you, right?

13 A. I didn't receive it from anyone, sir.

14 Q. Do you know how it got there?

15 A. No.

16 MR. ROCHON: May we approach, your Honor?

17 THE COURT: No, sir.

18 Q. Did you talk about your testimony this morning with anyone
19 from the team of lawyers representing the plaintiffs in this
20 case? I'll withdraw the question. It was asked so poorly.
21 During the lunch break, did you talk to any of the individuals
22 representing the plaintiffs about your testimony?

23 A. I did not speak with any of them.

24 MR. ROCHON: OK. I will come get that document, if I
25 may.

F11Qsok4

Eviatar - Cross

1 MR. YALOWITZ: Objection, your Honor.

2 THE COURT: Overruled.

3 MR. ROCHON: I don't know where to put it. I don't
4 know whose it is.

5 THE COURT: Why don't you ask a question and put it
6 aside.

7 Q. Sir, I am going to approach you with what has been marked
8 as Defendant's 75. If you would please look at Defendant's
9 Exhibit number 75 for identification purposes.

10 A. I see the exhibit.

11 Q. It's a map, right?

12 A. That's right.

13 (Continued on next page)

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F1L8SOK5

Eviatar - cross

1 Q. It's a map that includes portions of Israel as well as the
2 West Bank, correct?

3 A. It demarcates primarily the border of the West Bank. There
4 are no towns or places marked here in Israel.

5 Q. OK. What this is -- I am looking at it on the screen -- it
6 includes at the legend some colors for the three areas that are
7 in the West Bank, area A, B and C. Do you see that code at the
8 bottom of the map?

9 A. I see it.

10 Q. And you testified last week about what these various areas
11 mean, correct?

12 A. That's right.

13 Q. Area A is the area where the Palestinian government has
14 both security control and administrative control, right?

15 A. That's correct, sir. I would simply like to say that the
16 map that I am holding here in my hand is a map according to the
17 Palestinians, and in order to ascertain that it is correct, as
18 an investigator I would examine it together with other maps.

19 Q. You see that this map was produced by the Palestinian
20 Academic Society for the Study of International Affairs at the
21 bottom?

22 A. That's right.

23 Q. That's PASSIA, the same organization you said was a
24 reliable source of information about the Palestinian
25 government, right?

F1L8SOK5

Eviatar - cross

1 A. That's right. And still, this is a document that must be
2 examined just as I examined other documents as well.

3 Q. Sure. So examine it for a second, and you will see that
4 the areas that are dark colored, area A, are the same cities
5 that you identified as being area A last week in your
6 testimony, right?

7 A. Yes.

8 Q. And area B, in the lexicon for these areas, these are the
9 areas where Israelis have security control, but the
10 Palestinians have some administrative control, right?

11 A. That's right.

12 Q. Area C is the area where Israel has both security and
13 administrative control, right?

14 A. That's right.

15 Q. Last week when you testified on January 15 you said that
16 the PA controls, for the most part, the West Bank and Gaza
17 Strip. Do you recall so stating?

18 A. I remember. And what I said was that the Palestinian
19 Authority, and I reiterate that, controls more than 50 percent
20 of the Palestinian population in area A.

21 I will be more precise with your permission. The
22 Palestinians that reside in area A are more than 50 percent of
23 the population of the entire West Bank, and the Palestinians
24 that reside in area A are all under the control of the
25 Palestinian Authority.

F1L8SOK5

Eviatar - cross

1 Q. In fact, sir, isn't it the case that you told the jury last
2 week that 90 percent of the Palestinians live in A and B?

3 A. A and B together, yes.

4 Q. So who lives in C?

5 A. Between 100 and 150,000 Palestinians reside in area C.

6 Q. That's not what my question was, was it? I asked you who
7 lived there.

8 MR. YALOWITZ: Objection.

9 THE COURT: Sustained.

10 What is your question? I thought he understood your
11 question, but he obviously did not. What is your question?

12 MR. ROCHON: Who lives in area C.

13 THE COURT: He said 100 to 150,000 Palestinians.
14 That's not the answer to your question?

15 MR. ROCHON: No.

16 THE COURT: You will have to rephrase your question.

17 Q. Some people who are not Palestinians live in area C,
18 correct?

19 MR. YALOWITZ: Objection.

20 THE COURT: Overruled. You can answer.

21 A. Those who live in area C are Palestinians.

22 Q. Don't Israelis live now in area C in settlements?

23 MR. YALOWITZ: Objection.

24 THE COURT: Sustained. Let's move on to something
25 relevant. Mr. Rochon, let's pick this up.

F1L8SOK5

Eviatar - cross

1 Q. As an Israeli defense force soldier, you are responsible
2 for providing security in areas B and C, correct?

3 A. Security responsibility was not directly in my hands.

4 Q. The Israeli security services had responsibility for
5 security in areas B and C, correct?

6 A. Yes.

7 Q. Now, we have talked a little bit in the direct examination
8 about crimes that are alleged to be a struggle against the
9 occupation?

10 A. Yes.

11 Q. Such crimes can occur in area A, B, C, or outside the West
12 Bank, correct?

13 A. Yes, that's true.

14 Q. Now, the period of time -- I am going to turn to a new set
15 of exhibits.

16 MR. ROCHON: Could you put that back up, Justin? I'm
17 so sorry.

18 Q. Understanding that you have not actually seen this map to
19 compare it to others, you would agree with me that it roughly
20 shows the layout of the West Bank, correct?

21 A. The layout of the West Bank?

22 Q. Yes.

23 A. In principle, yes.

24 MR. ROCHON: Move in Defendants' Exhibit 75.

25 THE COURT: It will be admitted in evidence.

F1L8SOK5

Eviatar - cross

(Defendants' Exhibit 75 received in evidence)

Q. So when we look at the map and the portions that are dark in color, those are the ones -- I don't have a pointer.

The parts that are this color, where it says area A Palestinian cities, that includes, for instance, part of Hebron, and further up Jericho, and down here Bethlehem, and further up north other cities, correct?

A. In consideration of the fact, as you said, that I have not seen this map in relation to other maps, the brownish color that you pointed to is indeed area A.

Q. Then this lighter color, that is area B. I am just asking, generally, does that conform to where you understand that areas in area B were in the West Bank?

A. I can say so, yes.

Q. The other color, all the rest of the West Bank, that's C, area C, right?

A. Yes.

Q. When there is movement by Palestinians from area A to area C, that's controlled movement, correct?

MR. YALOWITZ: Objection.

THE COURT: Sustained.

Q. Now I will go to another exhibit. If we could go to 634, please, Plaintiffs' Exhibit 634.

Do you recognize Plaintiffs' Exhibit 634?

MR. YALOWITZ: Your Honor, may I consult with counsel

F1L8SOK5

Eviatar - cross

1 for just a moment?

2 THE COURT: Yes.

3 MR. ROCHON: Your Honor, for the record, there's two
4 different versions of the same document. They have the same
5 language. So this 634, the content is the same.

6 THE COURT: Don't explain it to me. Why don't you
7 talk to the witness and let the jury observe.

8 Q. Do you remember talking to Mr. Yalowitz about Plaintiffs'
9 Exhibit 634, which was one of the reports from the United
10 States government pursuant to Title VIII of this public law
11 that is listed up there, right?

12 A. Sir, I recall that we discussed one of the reports of the
13 United States administration. I think, though, it may have
14 been a report that was relating to different dates.

15 Q. OK. Didn't you in fact identify reports numbered 634, 635
16 and 496? And I will put all three up and you can see.

17 MR. ROCHON: Can we do 635, please?

18 Q. Do you see 635?

19 A. Yes, I do.

20 MR. ROCHON: If we can have 496.

21 Q. You see 496?

22 A. Yes, I do. We spoke about 496 in my testimony.

23 Q. OK. You spoke about 496, but you may not recall, but all
24 three were moved during your testimony so all three are in
25 evidence.

F1L8SOK5

Eviatar - cross

1 A. Yes.

2 MR. ROCHON: Your Honor, may I approach? That way I
3 will be showing him the version that was actually marked and
4 moved.

5 THE COURT: Yes.

6 Q. So if you would please take a look first at 634.

7 That's the report that you looked at on direct
8 examination, correct?

9 MR. YALOWITZ: Objection.

10 THE COURT: Overruled. He can answer yes or no. He
11 is the one who knows.

12 A. We spoke in the direct examination, as I said earlier,
13 about 496.

14 Q. That's your recollection?

15 A. Yes. I think we spoke about 496.

16 Q. So just to refresh your recollection on this, if we could
17 go to page 850 of the January 20 transcript, please?

18 If we can go up to lines 2 through 8.

19 If you see there, Mr. Yalowitz showed you 496, 634,
20 635 and 1142. And you indicated that you had all four of them?

21 A. Yes, indeed. The four were before me during the
22 examination, but we discussed or rather I was asked about
23 Exhibit 496.

24 Q. Understand. I may ask you about the others because they
25 are now in evidence. I just wanted to make sure that you knew

F1L8SOK5

Eviatar - cross

1 that you had actually seen them before.

2 So the period of time that was covered in these
3 reports was a very difficult time in the West Bank, correct?

4 MR. YALOWITZ: Objection.

5 THE COURT: Overruled. You can answer that.

6 A. Yes.

7 Q. The reports that were moved in during your direct
8 examination discussed that, right?

9 A. The reports here review or present the involvement of the
10 Palestinian Authority and the entities that belong to it.

11 Q. Now, if we go to 634, which is the one that's up there, and
12 the overview of the reporting period, it discusses the violence
13 that was occurring there, correct?

14 Do you see that portion that says overview of the
15 reporting period, which is also highlighted on the screen?

16 A. Yes.

17 Q. It discusses the violence that was going on at that time,
18 correct?

19 A. It discusses the violence in general terms without getting
20 into all the details.

21 Q. It discusses that 114 Israelis had been killed and 394
22 Palestinians had been killed in that period, correct?

23 A. That's what it says here, yes.

24 Q. Then if we go to Plaintiffs' Exhibit No. 496, I am handing
25 you 496.

F1L8SOK5

Eviatar - cross

1 MR. ROCHON: If you go to the same overview section
2 please, Justin.

3 Q. It discusses the level of violence during that period,
4 correct?

5 A. Here, too, it discusses in general terms the numbers of the
6 casualties.

7 Q. And it indicates that during that period 179 Israelis had
8 been killed and 879 Palestinians had been killed, correct?

9 MR. YALOWITZ: Objection.

10 THE COURT: Overruled. The document is in evidence.

11 MR. YALOWITZ: It misstates the document.

12 THE COURT: You can point that out.

13 Q. 179 Israelis were killed, and during the same period 879
14 Palestinians were killed. That's what it says, right?

15 MR. YALOWITZ: Your Honor, may I consult because I
16 think counsel is reading from something that is actually not in
17 evidence.

18 THE COURT: You want to show him the exhibit that
19 you're using?

20 MR. ROCHON: I am reading it incorrectly. It's 679,
21 not 879.

22 THE COURT: Let's back up. State the question again.

23 MR. ROCHON: I apologize.

24 Q. So I will back up. During that period, 179 Israelis were
25 killed and 679 Palestinians were killed, correct?

F1L8SOK5

Eviatar - cross

1 A. It says here 179 Israelis, including 151 civilians, were
2 killed and 679 Palestinians were killed.

3 Q. Thank you.

4 It was during this period that the IDF had the
5 operation that yielded the documents that you testified about
6 on direct examination that were allegedly recovered from
7 government offices, correct?

8 A. Can you repeat the question, please?

9 Q. It was during this period, the period of the violence that
10 we have been talking about, that the incursion occurred where
11 the IDF recovered the documents that you testified about on
12 direct examination, right?

13 MR. YALOWITZ: Object to the form, your Honor.

14 THE COURT: Overruled. He can answer it.

15 A. Just a moment, please. I would like to read that section
16 again.

17 Q. Which section?

18 A. The section that I see here on the screen.

19 Q. The section that says between December 16 and June 15,
20 2002?

21 A. Yes. Yes.

22 Q. Please read it.

23 A. OK.

24 Q. My question was, it was during this time frame that IDF
25 went in and allegedly recovered those documents that you

F1L8SOK5

Eviatar - cross

1 testified about with Mr. Yalowitz, right?

2 A. That's right.

3 Q. If we could go to 634, please.

4 Let me highlight for you a portion of that same U.S.
5 government report, number 634.

6 You see in that report from the U.S. government it
7 indicates -- it doesn't indicate, it states, and I quote:

8 "The PA on a number of occasions took action against
9 Islamic militant groups that rejected his calls for a
10 ceasefire. Violent clashes between PA security forces and
11 Hamas supporters in September resulted in -- may have resulted
12 in several deaths. There was evidence that at times during the
13 reporting period PA security forces in Jericho and Hebron acted
14 effectively to quell violence. Following the assassination of
15 Tourism Minister Rehavam Zeevi on October 17, the PA announced
16 the closure of the military wings of a number of rejectionist
17 groups. The PFLP, Hamas and the Palestinian Islamic Jihad
18 sharply criticized these moves and related arrests. On
19 December 12, the PA condemned an attack near the Immanuel
20 settlement on a bus that killed seven Israelis. The Al Aqsa
21 Martyrs Brigade carried out the attack."

22 Did I read that correctly?

23 A. You read it correctly, but it's important to state, sir,
24 that we have to look at the picture in its entirety. And it's
25 true that there are cases in which the Palestinian Authority

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Eviatar - cross

1 arrested or handled members of Hamas, or as it states here, but
2 we have to look at everything that the Palestinian Authority
3 did not do, and that is much more than what it did do.

4 And I would further state that I do not examine only
5 the declarations of the Palestinian Authority as it appears
6 here with respect to the closure of military wings. I examine
7 what it actually did. And, in actuality, not only did it
8 facilitate and allow the continued activity of the military
9 wings during the period of time that followed this report, but
10 it also assisted and supported the continuation of its
11 terrorist operations. And I, as an expert, as an investigator
12 of Palestinian affairs, that is the perspective with which I
13 examine these matters.

14 Q. I understand your views. You understand these are the
15 views of the United States, as evidenced in this report, right?

16 A. Sir, I spoke about the facts, and I only speak about the
17 facts.

18 Q. My question was, you understand that what you're reading up
19 there is a report from the United States, right?

20 A. That's right.

21 Q. Can we go to 496, please?

22 This report covers the period from December 16, 2001,
23 to June 15, 2002, and is again a report of the United States
24 Department of State in evidence as 496.

25 MR. ROCHON: I was directed to the wrong part.

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Eviatar - cross

1 Q. So what the report indicates here is, and I quote,
2 "Following the March and April IDF operations in the West Bank,
3 the PA security forces' ability to resume regular security
4 cooperation is significantly diminished. Many PA security
5 facilities and much of their equipment and weaponry have been
6 destroyed or confiscated. Hundreds of PA forces were arrested
7 during the operations, and many remained in IDF custody during
8 the reporting period." Do you see that?

9 You agree that that's what it says, right?

10 A. It's true that that's what it says.

11 Q. All right. It is true that, in fact, after the IDF
12 operations in the West Bank that the PA security forces'
13 ability to resume regular security cooperation was diminished,
14 significantly diminished, correct?

15 A. Sir, I do not agree with the conclusions that appear in
16 this section.

17 Q. All right. It is the case that the IDF had a different
18 view of what was going on there than the United States
19 government?

20 MR. YALOWITZ: Objection.

21 THE COURT: Sustained as to form.

22 Q. If we could go also in 496, and that's what we have on the
23 screen, in the report it goes on to say, "During these
24 incursions, the PA security forces in the West Bank were
25 severely damaged, both in manpower and equipment. The

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Eviatar - cross

1 headquarters of the PA's principal security service in the West
2 Bank was destroyed by the IDF."

3 That's what it says, right?

4 A. Sir, that's what it says here, but with respect to this
5 section as well, just as with the other sections that you
6 presented, I do not accept the conclusions that appear here.
7 We saw many situations, during which in the mentioned period of
8 time, when the Palestinian Authority wanted to make arrests and
9 handle things and handle those terrorist cells, it was capable
10 of doing so and nobody got in its way. What we saw, for
11 example, what I stated here, which contradict the conclusions
12 that appear here, for example, the method of the revolving
13 door. The revolving door proves, as an example, that when the
14 Palestinian Authority wanted to do so, or was forced to do so,
15 to arrest wanted persons, its security forces arrested those
16 same wanted persons, or some of them we should say, but
17 afterwards the Palestinian Authority released them. And,
18 therefore, I do not accept the conclusions that appear in this
19 report.

20 Q. Sir, do you agree that your views and the opinions
21 expressed to this jury are biased as a result of your work in
22 the IDF and in connection with the work that the IDF does in
23 the West Bank?

24 A. Sir, I absolutely do not agree with your statement.
25 Everything that I have presented here was a matter of fact

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Eviatar - cross

1 representations, meaning exhibits, the same documents that
2 appeared here, original exhibits. I have not expressed here,
3 not an opinion or a point of view, but rather conclusions that
4 are based upon fact as an investigator.

5 Q. So I think we will move to some of the exhibits that the
6 IDF created. Let's start with number 826 on page 9.

7 Do you remember 826 that was moved in during your
8 testimony?

9 A. Yes, sir.

10 MR. ROCHON: If we can go to page 9, subparagraph C,
11 Justin, and if you wouldn't mind highlighting that paragraph.

12 Q. Just so we are clear, this is a report from the IDF, right?

13 A. That's right.

14 Q. Even though the national language of Israel is Hebrew,
15 these reports were produced in English, correct?

16 A. These reports were written in Hebrew, and when they were
17 made public they were translated into English.

18 Q. Wasn't one of the reasons for the creation of these reports
19 to influence public opinion?

20 MR. YALOWITZ: Objection.

21 THE COURT: Overruled. He can answer.

22 A. I think that these reports simply present what was
23 confiscated at the headquarters of the Palestinian Authority,
24 as was presented here during the course of my testimony.

25 Q. All right. Let's see what the IDF says here in paragraph

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Eviatar - cross

1 C. What it says is that "the existence of a strong terror
2 infrastructure which was built by the PIJ and Hamas."

3 Let me stop there. PIJ is Palestinian Islamic Jihad,
4 right?

5 A. That's correct.

6 Q. "Which depends, amongst other things, on intensive use of
7 its financial resources. According to the documents, the large
8 amounts of money flowing to Jenin from Damascus (see below)
9 enable PIJ and Hamas to recruit to their ranks youths with
10 motivation, provide them with a monthly salary, and solve their
11 financial problems (while posing a challenge to Fatah, which
12 does not have such large financial resources, and whose
13 members, as reported in one document, receive financial aid
14 from PIJ). The strength of their financial sources enabled
15 these organizations, *inter alia*, to penetrate the ranks of the
16 Palestinian intelligence apparatuses, bribe senior commanders
17 of the apparatuses in the Jenin area, and receive assistance
18 from them in the operational activity and in protection against
19 expected PA moves."

20 Did I read it right?

21 A. You read it right.

22 Q. That last sentence says that they are getting assistance in
23 protection against expected PA moves, right?

24 A. Sir, what is presented here is one excerpt, which you read
25 perfectly as it's stated here, which is excerpted from an

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Eviatar - cross

1 entire report, which presents the assistance and involvement of
2 the Palestinian Authority, including officers in its security
3 apparatuses in Jenin, in assistance to free terrorist
4 activities of those same Islamic organizations, both in
5 collaboration with officers in the Palestinian Authority. And
6 a further statement about the finances that is mentioned here,
7 every organization, as I understand it, everywhere in the
8 world, including within the Palestinian Authority, always wants
9 more money, and we must bear in mind that money motivates
10 terror.

11 Q. In this instance, what it's talking about is money coming
12 from Damascus, which is in the country of Syria, correct?

13 A. From Damascus to the Islamic Jihad.

14 Q. Now, sir, you will agree with me at least to this, that
15 governing in the West Bank during this period and trying to
16 control the various forces was extremely difficult, wasn't it?

17 A. To what side are you referring?

18 Q. Well, I am not talking about the IDF. I am saying that if
19 you have got Hamas and the PIJ and Damascus and Hamas
20 shootouts, that it would have been difficult to govern in the
21 West Bank by the PA, right?

22 A. I don't know what that means "difficult." I know that the
23 Palestinian government was given the appropriate resources in
24 order to have control as a single governing force and not to
25 enable terror from any party, even one that may be considered

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Eviatar - cross

1 opposition to it.

2 Q. Do you think at all, would you admit at all, that the fact
3 of the dispute between Israel and Palestine might have caused
4 individuals to act on their own to commit terrorist acts?

5 Would you agree that's possible?

6 A. This theoretical possibility exists. I didn't investigate
7 individuals. I look and investigate how organizations
8 operated, how movements operated, certainly those that were
9 connected with the government. And those organizations and
10 movements that carried out terrorist activities, as I reviewed
11 here in my testimony, did not act as individuals on their own
12 account.

13 Q. The IDF reports that you and Mr. Yalowitz talked about and
14 were moved in during your direct examination -- 826, 626, 829,
15 631 -- out of all those reports, the actual supposed documents
16 that were recovered, he only showed you two or three, right?

17 A. Sir, I would like to emphasize here before the jury that
18 the documents that were presented here, as you yourself noted,
19 were just individual examples which were disseminated by that
20 IDF unit openly, to the public, in English and in Hebrew, but
21 these were just samples from many, many documents and
22 intelligence materials, which were not presented here.

23 And we must bear in mind one more thing that I will
24 say. These are only the examples that the IDF confiscated, and
25 dealt with them and disseminated them, out of dozens or

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Eviatar - cross

1 hundreds of boxes of materials, original materials that were
2 captured in the Palestinian command posts and which have not
3 been dealt with to this day.

4 Q. And none of the examples that were offered in your direct
5 examination go to any of the individuals that were convicted in
6 these cases that are on trial here, correct?

7 A. I would like to reiterate, sir, that the precise details of
8 the terror attacks that will be discussed here I am not
9 familiar with. I can testify to all the things that I
10 testified up till now, and I am willing to answer any question
11 on that that you may have.

12 Q. None of the documents that you were shown by Mr. Yalowitz
13 involved any of the individuals who were convicted in the
14 Hebrew University case, correct?

15 MR. YALOWITZ: Object to form.

16 THE COURT: Overruled. He can answer it if he
17 understands.

18 A. Could you repeat the question, please?

19 Q. Yesterday you were asked questions about people convicted
20 in the Hebrew University incident, yes?

21 A. Yes.

22 Q. Yesterday and in earlier days Mr. Yalowitz showed you some
23 of the supposed documents the Israelis actually recovered, not
24 the reports but the documents they actually recovered, yes?

25 A. Correct.

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Eviatar - cross

1 Q. None of those documents that he showed you related to the
2 people who were convicted in the Hebrew University case,
3 correct?

4 A. I don't agree. Let me give you an example. The documents
5 presented the involvement of Marwan Barghouti, the leader of
6 Fatah in the West Bank, with the authorization and the
7 allocation of terror funds for example.

8 Q. Hebrew University was a Hamas case, right? Is that right?

9 A. The terror bombing in the Hebrew University was carried out
10 physically by a Hamas cell, but as we saw here in evidence that
11 was presented, that cell, or at least part of it, received
12 assistance from senior members of the Palestinian Authority.

13 Q. Who in that unit received assistance from senior members of
14 the Palestinian Authority according to the evidence and the IDF
15 documents, which one?

16 A. Mosaab Yousef said in his testimony that Marwan Barghouti
17 received in his hands from Abdullah Barghouti.

18 Q. You know, sir, as you sit here today, that Marwan Barghouti
19 was not convicted of the Hebrew University bombing, don't you?

20 A. Correct.

21 Q. You know I was asking you questions about the documents
22 recovered by the IDF, right?

23 A. Correct.

24 Q. And none of those documents relate to the Hebrew University
25 case or its commission, do they?

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Eviatar - cross

1 A. The documents do not discuss the bombing at the university.
2 But you asked me earlier, sir, about people that appear in
3 these documents and who are connected to terror, and that's
4 what I answered you.

5 Q. No, sir. I asked you about people connected to the Hebrew
6 University incident, didn't I?

7 MR. YALOWITZ: Object to the form.

8 THE COURT: Overruled. He can answer.

9 A. Yes. And I answered about Marwan Barghouti, who was also
10 mentioned in Mosaab Yousef's testimony and is also mentioned in
11 the indictment of Ahmed Barghouti.

12 Q. So you remember the indictment of Ahmed Barghouti?

13 A. Yes. It was presented here.

14 Q. And he too was not convicted in the Hebrew University
15 bombing, correct?

16 A. Correct.

17 MR. ROCHON: I think I am done with Lieutenant Colonel
18 Eviatar. May I check with my colleagues, your Honor?

19 THE COURT: Yes.

20 MR. ROCHON: I actually did forget one or two things.

21 Q. The martyrs society, you mentioned that briefly the other
22 day?

23 A. Yes, I recall.

24 Q. The actual name of it is the Institute for the Care of
25 Martyrs Families and the Injured?

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Eviatar - cross

1 A. The actual name is the Foundation for the Welfare of the
2 Families of the Martyrs and the Injured.

3 Q. Eligibility for such payments comes to anyone injured as a
4 result of the occupation, right?

5 A. Who is injured in the context of his struggle against the
6 occupation.

7 MR. ROCHON: I think that's all I have.

8 A. That's the Palestinian definition.

9 MR. ROCHON: Thank you.

10 THE COURT: Do you want to take a break?

11 MR. YALOWITZ: As you wish. I am happy to proceed
12 right now or take a few moments.

13 THE COURT: Do you think it will be longer than five
14 or ten minutes?

15 MR. YALOWITZ: Redirect may be half an hour.

16 THE COURT: Then let's take a break.

17 Ladies and gentlemen, let's take a break. Don't
18 discuss the case, keep an open mind, and I will see you in ten
19 minutes.

20 (Jury exits courtroom)

21 (Recess)

F11Qsok6

(Jury not present)

THE COURT: Before we bring out the jury, I want to take some of the other issues quickly. I want to make a list. I am going to overrule the general objection to what we will characterize as police magazines, although I am not going to allow all of it. I think if there is some genuine factual dispute as to whether or not these are police magazines and these are statements of the defendant or published by defendant, then I think that is for the jury to determine. I find a minimum foundation is laid, given the nature of the magazine and how they're published. I find a lot of them were not relevant and more prejudicial than probative. A lot of what I've cut out has been certain religious stuff from either side quoting from the Koran or Bible or wherever it's quoted from and comments that were made that have to do with religion. I think there is -- I won't call it a leap, but I think there is a link that is part of the plaintiff's burden to connect what they claim are language inciting violence, what violence they say it incites, and how does it incite the violence that are at issue in this case. I am not going to address that now. These are the ones I am going to rule on.

The only thing is I saw references in citations of relevant portions on all of the exhibits except Exhibit 937. It was listed, but there was nothing in your letter, Mr. Yalowitz, that told me what language, as you cited for all

F11Qsok6

1 the others, what language in 937 that you thought was relevant
2 to be admitted. Was that deliberate?

3 MR. YALOWITZ: Unlikely, but let me do this: Let's
4 hear what the Court's balls and strikes are on the other ones.
5 If there is something in -- which one was it, your Honor?

6 THE COURT: 937.

7 MR. YALOWITZ: If there is something in 937 that I
8 think I need, then I will give you a call.

9 THE COURT: You will let me know.

10 MR. YALOWITZ: If I think I need it and it's
11 consistent with your other rulings, I'll let you know. If I
12 think I need it and it's outside the lines of what your rulings
13 are, I'll be guided by that ruling and it will be understood I
14 offered it, but that based on the other rulings, I'm not going
15 to re-offer it.

16 THE COURT: We can discuss in detail later, but let me
17 give you my list as I have it as it existed in plaintiff's
18 letter.

19 Exhibit 201 is out. Exhibit 202 is out. Exhibit 204
20 is out. 175 is in. 964 is out. 198 is in. 178 is in. 199
21 is out. 177 is out. 179 is out. 200 is in. 936 is in. 203
22 is out. 935 is in. 949 is in. 176 is out. 965 is in. 966
23 is out. 185 is in. 176 is out. And my default position,
24 because I've looked at it and I can't find, nor it hasn't been
25 identified at this point what the relevant portion would be,

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1 I'm going to rule at this point that 937 is out; but if you
2 tell me there is something there -- but, quite frankly, in my
3 review of 937, again, I think it is a two-edged sword because I
4 think some of the statements in there are not particularly
5 complimentary of plaintiffs with regard to the issues that are
6 raised there and are not particularly -- I'll just put it that
7 way.

8 You can look at it. That's an assessment the
9 plaintiff has to make whether or not you feel its probative
10 value is greater than the danger the jury might use other
11 portions against you.

12 MR. YALOWITZ: I'll assume it's out unless there's
13 something we really think we need in it, we'll make that
14 assessment; but if you don't hear from us, you should assume
15 it's been withdrawn.

16 THE COURT: I can give you some reasons specifically I
17 will just give you an example of 201 is the first one on here,
18 talking about liquidating the Jews, describing them as a
19 chronic parasite disease, cutting out some or all of their
20 organs and destroying its function. I think that that is a bit
21 over the top to simply be evidence that it is some signal or
22 indication that they intend to do terrorist acts or that they
23 intend to do the terrorist acts involved in this case. I think
24 it is highly inflammatory and prejudicial and the undue
25 prejudice outweighs whatever probative value that one

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1 particular statement by --

2 MR. YALOWITZ: So with regard to 201, which I happen
3 to know that one, because I was thinking about showing it in
4 opening, as your Honor may recall, but which we pulled back on.
5 The argument the defendant is making here --

6 THE COURT: Let's not go into details of it now. I
7 want to give you a chance to finish this witness.

8 MR. YALOWITZ: I really would like to talk about that.
9 If we could do it after we dismiss the jury, I appreciate it.

10 THE COURT: We could do it after or if you want
11 further time to look back at the ones I gave you and make a
12 decision of which ones you think are compelling. You can raise
13 that before we get to the witness.

14 One other thing that I want to address now, so you can
15 go forward efficiently, 553, that exhibit --

16 MR. YALOWITZ: Right.

17 THE COURT: -- as I say, I don't know why we're
18 dealing with it now. I have read that exhibit. I am going to
19 rule this exhibit is inadmissible, and I will give you the
20 quick reason. I want the record to be clear.

21 MR. YALOWITZ: I was going to say I'll withdraw it and
22 we can get the jury in --

23 THE COURT: If you withdraw, I don't have rule. I
24 wish you would withdraw it before I ruled, but I want the
25 record to be clear because, remember, look, I know lawyers --

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1 as I say, all the nice things the lawyers say about me during
2 about how good a trial they get all go out the window when one
3 side loses and they want to tell the Circuit what a stupid
4 judge I was and all the mistakes I made.

5 I want the record to be clear as to why I am doing
6 things. In this case, the conclusion this report draws is not
7 supported by the documents. That is the main reason. It is
8 not the only reason, but it's the main reason. The documents
9 simply say there is budgeted money going from the PA to Fatah.
10 The conclusion that in this manner, the PA created an
11 infrastructure of terror activists in dozens of local branches,
12 and then to further support that by what they call a reasonable
13 assumption, it is reasonable to assume that during the course
14 of the confrontation with Israel, the scope of the financing
15 has increased due to the growing expenditures of Fatah and
16 Tanzim whose activists perpetrated a considerable number of
17 terrorists attacks. That is not supported by any of the
18 documents that are attached to this. The documents are just
19 financial documents.

20 MR. YALOWITZ: I understand the distinction the Court
21 is drawing. I don't have a problem with it. I am not trying
22 to be sycophantic. There are other rulings I do have a problem
23 with, and we have discussed them, but I don't have a problem
24 with that.

25 THE COURT: That is my position. So going forward to

F11Qsok6

1 the next witness, we can address it further if we need to by
2 either side, but otherwise that's my ruling, and you should be
3 prepared to examine the witness on that basis.

4 Let's get the jury in and finish up with this witness.

5 (Continued on next page)

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(Jury present)

THE COURT: I apologize for the weather indoors. I know it's either too hot or too cold. We have been trying to adjust it all week. I guarantee you we are paying attention to it.

Mr. Yalowitz, any redirect?

MR. YALOWITZ: Just a little bit, your Honor. Thank you.

REDIRECT EXAMINATION

BY MR. YALOWITZ:

Q. Mr. Eviatar, during your cross-examination you were asked some questions about Roni Shaked. Do you recall that line of questioning?

A. Yes.

Q. In particular, do you recall being asked about the fact that Roni Shaked did a draft of what ultimately became your report?

A. I remember that.

Q. Do you recall the circumstances that caused Mr. Shaked to withdraw as an expert in this case?

MR. ROCHON: Objection, your Honor.

THE COURT: Is this really a controversial issue?

MR. ROCHON: Yes. Well, not controversial. Moderately controversial. Not the end of the world. I'd like it sustained more than overruled, but I'll defer to the Court.

F11Qsok6

Eviatar - Redirect

1 THE COURT: I don't know what he's going to say. Come
2 on just quickly.

3 (Continued on next page)

F11Qsok6

Eviatar - Redirect

1 (At the sidebar)

2 THE COURT: I just don't know.

3 MR. ROCHON: I think he had some kind of health
4 problem, or his spouse did.

5 MR. YALOWITZ: Shaked's wife had cancer, so he
6 withdrew. We got permission from Judge Ellis to substitute him
7 in. On cross Mr. Rochon said --

8 THE COURT: I just want to know how much you want out
9 of him.

10 MR. YALOWITZ: I want three or four questions just to
11 establish --

12 THE COURT: How much of -- not questions. You don't
13 want questions. You want answers. Tell me what you want him
14 to say.

15 MR. YALOWITZ: That Shaked's son and wife both had
16 grave health illnesses. He withdrew. We received permission
17 from the Court to make the late substitution. I think it's
18 fair. He's opened the door.

19 MR. ROCHON: My point of the cross was when they got a
20 report and then whether it was his, I didn't suggest anything
21 untoward about Mr. Shaked.

22 THE COURT: He's got the right to explain why he came
23 in at the last minute. Obviously, you raised issues about him
24 adopting this other report. He didn't do it because they
25 kicked the other guy out and didn't like what he said.

F11Qsok6

Eviatar - Redirect

1 Obviously, he did it because the guy had a health
2 problem, but I don't think we need much more detail than that.
3 I don't think we need four questions. I only think you need
4 one question. If he answers this question, I don't know why
5 you need more.

6 MR. YALOWITZ: I just want to establish we got
7 permission from the court to substitute.

8 THE COURT: I don't know why that's relevant.

9 MR. YALOWITZ: Because it's been suggested there was
10 something improper about substituting him in.

11 MR. ROCHON: I think he wants to lead him and say did
12 Mr. Shaked have a family health emergency that required him to
13 no longer be an expert in the case. I have no problem with
14 that. That gets him where he needs to be.

15 MR. YALOWITZ: I don't mind the Court instructing the
16 jury that we had permission to make the substitution.

17 THE COURT: How does he know that?

18 MR. YALOWITZ: I'm saying, you could --

19 THE COURT: How does he know? You're asking him; not
20 me. This is your examination.

21 MR. ROCHON: I am willing to give him the leading
22 question so he could get it all out. He had a family health
23 issue. I don't discredit whether he had a family health issue
24 that required he no longer be a witness.

25 THE COURT: I will let you go into it a little bit.

F11Qsok6

Eviatar - Redirect

1 MR. YALOWITZ: Let me just do a couple questions on
2 it.

3 THE COURT: I would stay away from the court stuff.
4 He doesn't know anything about what goes on in court, what you
5 were allowed or weren't allowed. All he can say is I got hired
6 because the other guy had an illness and he had to be
7 substituted. That's it.

8 MR. YALOWITZ: Understood. We'll do it that way.

9 (Continued on next page)

F11Qsok6

Eviatar - Redirect

1 (In open court)

2 THE COURT: You can continue.

3 BY MR. YALOWITZ:

4 Q. Mr. Eviatar, are you aware of the circumstances that caused
5 Mr. Shaked to withdraw as an expert in this case?

6 A. I am definitely aware of them.

7 Q. Would you very briefly, just very briefly, explain them to
8 the jury.

9 A. This refers to very tragic family circumstances.

10 Q. Did the family have some health problems that required him
11 to attend to that business instead of continuing on with us?

12 A. Definitely.

13 Q. In coming in at the last minute like that, did you have the
14 opportunity to carefully review the report --

15 MR. ROCHON: Objection. Leading.

16 THE COURT: No, I'll let him ask this question.

17 A. Of course I did. I reviewed the entire thing very
18 meticulously.

19 Q. And did you make changes?

20 A. Yes, I made changes, throughout the entire expert's
21 opinion.

22 Q. And the ultimate work product, do you stand behind it?

23 A. I stand behind the entire expert report from the first word
24 until the very last word.

25 Q. Thank you.

F11Qsok6

Eviatar - Redirect

1 Do you remember being asked about the number of
2 security prisoners in jail?

3 A. Yes, I remember that.

4 Q. Did you have an estimate based on your experience and
5 research of the number of prisoners who are in jail as a result
6 of those struggle-against-the-occupation crimes?

7 A. Yes, I do have such an estimate.

8 Q. What is it?

9 A. It's based upon information that's public record. In the
10 most recent period of time, or lately, one could say that the
11 figures, the numbers of Palestinian prisoners who meet that
12 definition ranges between 4,000 and 4,000 and a bit.

13 Q. Of the 4,000 or so, how many are employees of the PA
14 security apparatus in your estimation?

15 MR. ROCHON: Objection. Scope.

16 THE COURT: No, overruled. He can answer.

17 A. According to declarations of senior members of the
18 Palestinian Authority, this refers to approximately 700 members
19 of the security apparatuses.

20 Q. Do you have an opinion on whether those individuals, that
21 700 figure, are individuals who were accused of light crimes
22 like throwing rocks?

23 MR. ROCHON: Objection, your Honor.

24 THE COURT: Sustained as to form.

25 Q. Of the 700, is it your view that -- let me strike that and

F11Qsok6

Eviatar - Redirect

1 try it again.

2 Do you have a view on the nature of the crimes the 700
3 committed?

4 MR. ROCHON: Objection, your Honor.

5 THE COURT: Overruled. You asked him about it.

6 A. Yes, I do.

7 Q. What is it?

8 A. Most of them, perhaps even the overwhelming majority of
9 them, of this group of people, are incarcerated as the result
10 of these people being involved in acts of terror.

11 MR. ROCHON: Objection, your Honor.

12 THE COURT: Overruled. You opened the door up. You
13 can cover it on recross.

14 Q. Do you recall Mr. Rochon asking you some questions about
15 increases in salary for security prisoners from the PA around
16 the 2011 time period?

17 A. Yes.

18 Q. What, if anything, did those prisoners do to earn that
19 raise?

20 A. They did nothing. They simply sat in prison.

21 Q. Do you recall Mr. Rochon asking you a line of questions
22 about the Red Cross?

23 A. Yes.

24 Q. What I would like to do is show you a Red Cross
25 certificate. Have you seen those in the documents in your

F11Qsok6

Eviatar - Redirect

binders?

A. Yes.

MR. ROCHON: Which exhibit is this?

MR. YALOWITZ: Let me see if I can bring it up. Let me turn to Exhibit 86 which is a prisoner file of Muhammad Odeh. I apologize, your Honor.

Q. I put on the screen a Red Cross certificate from Exhibit 86 which is the individual that Mr. Rochon was asking you about. Have you seen documents like this before?

A. Of course I have. I've seen many such documents.

Q. Is there anything in this Red Cross certificate that says what the reason is why the individual is being held in prison?

A. Just a moment, please.

Q. Would you prefer the Arabic?

A. No, English is OK. No reason whatsoever appears there for the detention or the imprisonment.

Q. Thank you.

Let's see if with Mr. Kelly's help we can switch from the Elmo to our computer system and take a look at Exhibit 512. In particular, I would like to take you to the check list which I think is in Article 10. Could we highlight for the jury item number 2, the charge sheet issued by the Israeli military prosecutor. Is that charging sheet a document that is required for the evaluation by the ministry of prisoners whether they've committed a struggle-against-the-occupation crime?

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1 A. Yes.

2 Q. As between the Red Cross document and the indictment that
3 they get from the prosecutor, which one tells them what kind of
4 crime they're in jail for?

5 A. The document from the military prosecution itemizes the
6 charges.

7 Q. Let's take a look at Article 6 of that law. I want to
8 focus your attention on an item there, which I may have written
9 it down incorrectly. I'm not sure. Could you take a moment to
10 look at this grid from Article 6 of the prisoner's law.

11 A. Yes.

12 Q. What is going on with this grid?

13 A. Here the amounts of money are itemized, amounts of money in
14 U.S. dollars, which the released prisoners will receive
15 immediately upon their release from prison. The table provides
16 the figures on the basis of how many years you were
17 incarcerated. The longer the period of time that you sat in
18 prison, the amount of money that you will receive upon your
19 release will be higher.

20 Q. You get that money even if you are wealthy?

21 A. According to this section, there are no limitations.

22 Q. Thank you.

23 Do you recall Mr. Rochon asking you some questions
24 about the translation of Exhibit 963?

25 A. I don't see the exhibit.

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1 Q. Now do you see it?

2 A. Yes.

3 Q. He was asking about that translation of the word warrior
4 brothers.

5 A. That's right.

6 Q. Did you do this translation?

7 A. No, I did not.

8 Q. Do you know who did?

9 A. This document was translated by a professional, as it says
10 here, named Yaniv Berman.

11 Q. Do you think that the translation in the context of this
12 document is a fair translation?

13 A. Yes.

14 Q. Thank you. Now, do you recall Mr. Rochon asking you a line
15 of questions about the ministers in the PLO and the PA who are
16 not members of Fatah?

17 A. Yes.

18 Q. Am I remembering correctly that he identified the ministry
19 of tourism and person in charge of women's affairs and public
20 works as non-Fatah members?

21 MR. ROCHON: Objection. Leading.

22 THE COURT: Overruled. You can answer the question.

23 A. Yes. That's how I remember it.

24 Q. He identified some ministers without portfolio as non-Fatah
25 members?

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Eviatar - Redirect

1 MR. ROCHON: Objection.

2 THE COURT: Overruled. You can answer.

3 A. I don't think so.

4 Q. Well, let me take an example. The ministry of tourism, do
5 they issue guns to the employees of the ministry of tourism?

6 A. Not at all.

7 Q. Now, are you aware of any -- when Mr. Rochon was going
8 through that exercise with you, did he identify any ministers
9 or people in charge of the security forces who were not members
10 of Fatah?

11 A. No.

12 Q. Are you aware of any leaders of the security forces who
13 were disloyal to Arafat?

14 MR. ROCHON: Objection.

15 THE COURT: Sustained.

16 Q. Are you aware of any members of the security forces who
17 were not members of Fatah?

18 A. I don't know of any.

19 Q. Now, Mr. Rochon showed you some photographs during your
20 cross. Do you recall that?

21 A. Yes.

22 Q. I would like to show you one myself that we marked for
23 identification as 1148. I just need a box top. Are you
24 familiar with that photograph?

25 A. Definitely.

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Eviatar - Redirect

1 Q. Who is it?

2 A. It is Yasser Arafat holding a picture of Marwan Barghouti.

3 MR. YALOWITZ: Plaintiffs move 1148 in evidence.

4 THE COURT: It will be admitted.

5 MR. ROCHON: Subject prior, your Honor.

6 THE COURT: Yes, it will be admitted.

7 (Plaintiff's Exhibit 1148 received in evidence)

8 Q. Is that the same Marwan Barghouti we have been discussing
9 the last few days?

10 A. Exactly the same one.

11 MR. YALOWITZ: I don't have anything further on
12 redirect, your Honor.

13 THE COURT: Anything further on recross?

14 MR. ROCHON: I have one area.

15 RECROSS EXAMINATION

16 BY MR. ROCHON:

17 Q. Sir, you said just now to Mr. Yalowitz that there were 700
18 security officers that were incarcerated in Israeli jails as of
19 now, right?

20 A. I mean security people.

21 Q. From the security services of some sort?

22 A. Yes.

23 Q. Then you said that most of them, perhaps overwhelmingly,
24 that most them were involved in terror?

25 A. Yes.

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Eviatar - Recross

1 Q. What is your source for that claim?

2 A. My authorized source, first of all, is a professional
3 summary which was written by the Israel Security Agency which
4 is the entity in Israel that is authorized in this area.

5 Q. Go ahead.

6 A. The second source that I used for my answer is the
7 cooperation -- professional cooperation and affinity that I
8 have with the Israeli prison service which is the body that is
9 holding those prisoners.

10 Q. So if I understand your answer correctly, it is from the
11 Israeli prison and then the Israeli government?

12 A. That is regarding my estimate or the estimate that most of
13 them were involved in terror.

14 Q. Your source is not from the United States?

15 A. No.

16 Q. Your source is not from the Palestinian Authority?

17 A. No.

18 Q. Your source is not from the international committee of the
19 Red Cross that certifies the incarceration?

20 MR. YALOWITZ: Objection.

21 THE COURT: Overruled.

22 A. No.

23 Q. And your source is not from review of the convictions of
24 those 700 people?

25 A. That's correct.

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Eviatar - Recross

1 MR. ROCHON: Nothing else.

2 THE COURT: Any further questions, Mr. Yalowitz?

3 MR. YALOWITZ: No, your Honor.

4 THE COURT: Thank you, sir. You can step down.

5 (Witness excused)

6 THE COURT: Would it be convenient to at least
7 introduce your next witness and go for ten or 15 minutes?

8 MR. YALOWITZ: We are ready to go. The witness is
9 here. Why don't we get him called.

10 Plaintiffs call Israel Shrenzel.

11 Your Honor, may I consult with the interpreters for a
12 moment?

13 THE COURT: Sure.

14 MR. ROCHON: I don't know what we're doing.

15 THE COURT: You can come up too if you want.

16 MR. YALOWITZ: Come up too.

17 THE COURT: I don't think there is any mystery.

18 (Off the record)

19 THE COURT: Mr. Yalowitz, let's do this: My
20 understanding from overhearing your conversation is this
21 witness will probably testify primarily, if not completely, in
22 English. Is that right, Mr. Yalowitz?

23 MR. YALOWITZ: I'm sorry, your Honor.

24 THE COURT: The witness will testify primarily, if not
25 completely, in English.

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Eviatar - Recross

1 MR. YALOWITZ: Correct.

2 THE COURT: But you would like the interpreters to
3 stand by because you may want something interpreted if he
4 doesn't understand English.

5 MR. YALOWITZ: Right. English is not his first
6 language.

7 THE COURT: That's fine. We will swear him in in
8 English and have him testify in English. Anytime he wants to
9 consult with the interpreter to interpret for him or wants to
10 speak in another language, he can.

11 MR. YALOWITZ: Thank you, your Honor. That's perfect.

12 ISRAEL SHRENZEL,

13 called as a witness by the Plaintiffs,

14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. YALOWITZ:

17 Q. Mr. Shrenzel, where are you from?

18 A. I'm from Tel Aviv, Israel.

19 Q. Is that where you grew up?

20 A. Yes, sir.

21 Q. Could you tell the jury about your education?

22 A. I graduated from the Tel Aviv University many years ago and
23 in the field of middle eastern studies and Arabic/Islamic
24 studies, and I completed a B.A. degree in these fields; and
25 then after my military service, I completed my M.A. degree in

F11Qsok6

Shrenzel - Direct

1 middle eastern studies. Further along the road, I graduated
2 from a program of linguistic editing in Hebrew.

3 Q. Could you tell the jury about your early professional
4 experience?

5 A. Yes. So after graduating from Tel Aviv University, I
6 joined the intelligence branch of the IDF where I served in the
7 analysis unit dealing with Palestinian issues for three and a
8 half years, and then I moved on to Syrian affairs for another
9 year and a half.

10 Q. When you were in the IDF intelligence branch, what were
11 your job responsibilities?

12 A. The IDF I was then a junior officer, and I was assigned
13 with analyzing Palestinian issues, especially the PLO. It was
14 before, of course, the foundation of the PA.

15 Q. What kind of work did you do? How did you do that work?

16 A. In the IDF, you mean?

17 Q. Yes.

18 A. Well, the accepted method of analysis in intelligence
19 service, we gathered materials -- materials from various
20 sources were supplied to us by other units of the intelligence,
21 and we were charged with analyzing, assessing it and writing
22 reports based on that information.

23 Q. What did you do after you left the IDF?

24 A. After I left the IDF, basically my main issue was
25 completing my M.A. thesis, as I previously stated; and a few

F11Qsok6

Shrenzel - Direct

1 years after I was released from the army I joined the Israeli
2 Security Agency.

3 Q. What is the Israeli Security Agency?

4 A. The Israeli Security Agency is a government body charged
5 with frustration or prevention of terrorism and espionage. We
6 can equate it in some way to the FBI in the United States.
7 Remember in mind or keep in mind in Israel this body is not
8 charged with dealing with criminal activity, only, as I said,
9 terror and espionage.

10 Q. Now, how long did you work there at the Israel Security
11 Agency?

12 A. I worked there for 17 years.

13 Q. What kind of job did you have by the end of your time
14 there?

15 A. In the last ten years of my service, I was head of the
16 department that dealt with the analysis of Palestinian affairs,
17 especially the policies of the PLO, the PA and the various
18 other Palestinian organizations.

19 Q. Did you say you headed up a team that looked at those
20 questions?

21 A. Of course, yes. I was the head of the department. My rank
22 was equivalent to that of a colonel, and I had under me around,
23 let's say, 15 to 20 analysts.

24 Q. What kind of topics did you focus on with regard to policy
25 at the PA and PLO?

F11Qsok6

Shrenzel - Direct

1 A. Yes. We basically tried to understand the ideas, the
2 ideologies, the motivation and the declaration and of course
3 the deeds of the PA as a whole and of the various organizations
4 within the PA and even those that were not part of the PA, such
5 as Hamas and PIJ and analyzing the positions of various
6 important individuals in the PA area.

7 Q. When you were at the Israel Security Agency, were you like
8 an in-the-field guy going around to various towns or were you
9 more like an in-the-office guy looking at documents?

10 A. Much more an office guy, sir. Of course from time to time
11 we also visited Palestinian towns or -- but this is where we
12 were.

13 Q. During your years at the ISA, did you have occasion to
14 interact with counterparts in the U.S. Government?

15 A. Yes, that was part of my job to handle some exchange of
16 information and analysis, assessments, so I did that.

17 Q. Did you have an opportunity to come here to the United
18 States from time to time?

19 A. Yes, let's say half a dozen times during my service.

20 Q. Did you also work with security people around the world,
21 not just the U.S.?

22 A. Well, I prefer not to go into details, but in general terms
23 the answer is yes.

24 Q. Now, did you provide a written report in this case earlier
25 during the course of the case?

F11Qsok6

Shrenzel - Direct

1 A. Yes, I did.

2 Q. What was your sort of work style in getting ready to sign
3 off on that report?

4 A. Yes. The methodology of preparing the report was very much
5 similar to any work of intelligence analysis; namely, I tried
6 to base the report on facts, on documents, and so we gathered
7 information regarding each of the five attacks I am going to
8 discuss, and based on that I tried to reach conclusions, first
9 of all, of exactly what happened, who was involved in these
10 attacks, and what is the level of involvement of the defendants
11 in those acts of terror.

12 Q. Did you have individuals who supported you in your work
13 preparing a report to reach your conclusions?

14 A. Yes, there was a team that gathered the material and
15 prepared an initial draft of my report.

16 Q. Who were the members of that team?

17 A. The members of that team were two people, two persons,
18 Arie Spitz and Noa Meridor.

19 THE COURT: Spell the last name.

20 THE WITNESS: M-E-R-I-D-O-R.

21 Q. Thank you. Are those individuals that you had encountered
22 from time to time in the past?

23 A. Yes, I had some working relationship with them as they both
24 are in the government body name COGAT, the Coordination of
25 Government Activities in the Territories.

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Shrenzel - direct

1 Q. Just tell the jury what you did to review the initial work
2 that they did.

3 MR. ROCHON: Objection, your Honor. Can we approach
4 on this?

5 THE COURT: Can we send the jury home at this point?

6 MR. YALOWITZ: As your Honor wishes.

7 THE COURT: Let's send the jury home.

8 Don't discuss the case, keep an open mind, and I will
9 see you at 9:30.

10 (Jury exits courtroom)

11 MR. ROCHON: We have already discussed early today
12 these reports don't come into evidence barring something
13 unusual. I let Mr. Yalowitz go for a while on this, but it
14 seems that we are getting into the report itself. I am not
15 really sure where we are going here.

16 THE COURT: I don't remember the question, but I don't
17 remember it as being an objectionable question. What are you
18 objecting to?

19 MR. ROCHON: I think we are getting pretty far into --

20 THE COURT: Did you object to something he asked?

21 MR. ROCHON: That he asked.

22 THE COURT: What did he ask?

23 MR. ROCHON: The last question was about the people
24 who helped him prepare the report and had a working
25 relationship with him and what essentially they did in

F1L8SOK7

1 assisting him in preparing the report.

2 THE COURT: That's not the substance of the report.

3 MR. ROCHON: We are getting there. I don't know where
4 we are going with a document that's not going to come into
5 evidence barring something unusual.

6 THE COURT: I don't know where we are going either,
7 but we haven't gotten to any portion that's objectionable yet.
8 I think it's perfectly appropriate, just as you asked on
9 cross-examination with the last witness who helped him prepare
10 the reports, how they were done, the methodology, whether he
11 did it all on his hand, whether it was all in his head or had
12 assistance. All of that seems appropriate. So at this point,
13 unless he is going into the details of the report or starts
14 quoting stuff out the report to the witness, I don't think we
15 have gotten to any objectionable area.

16 Mr. Yalowitz, do you intend to cross that line?

17 MR. YALOWITZ: No. I just sat there and listened to
18 him try to make hay out of the fact that the last guy didn't do
19 the first draft of his report. So this guy didn't do the first
20 draft either. I just wanted to bring it out to the jury so
21 they know there is nothing wrong with it. It is not some
22 sneaky thing. It's just the normal way that a lot of people
23 work.

24 THE COURT: I don't think there was anything you asked
25 that was inappropriate. Obviously, we had this discussion at

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1 the sidebar. If for some reason the substance of the report
2 itself becomes relevant, and you think you want to read that to
3 the witness before the jury, then we should address that. But
4 at this point I assume the witness is going to testify to the
5 relevant portions that we talked about that are consistent with
6 his report, and to the extent that it's not consistent with his
7 report, the defense will have an opportunity to say you said
8 something different in your report and quote it to him and let
9 him be questioned about it.

10 MR. ROCHON: A related issue.

11 THE COURT: You can step down, sir.

12 MR. ROCHON: I appreciate that counsel and the witness
13 referred to the five incidents instead of more that he looked
14 at. We appreciate the care that counsel took.

15 THE COURT: Always glad to hear when you appreciate
16 each other. That's always a big change. You guys are playing
17 well together.

18 MR. YALOWITZ: It's all you.

19 THE COURT: Why don't you get some rest and let's pick
20 up tomorrow morning. Let me know if I have to be here by 7:00
21 in the morning to read some letters, but let's hope we are
22 getting to a point where I can get some more sleep.

23 MR. HILL: Just to let you know, we will be filing a
24 letter tonight on the other exhibits we got yesterday that we
25 were not told would be up today in accordance with your Honor's

F1L8SOK7

1 direction to object within 24 hours.

2 THE COURT: I am shocked.

3 I will see you tomorrow morning.

4 MR. YALOWITZ: Judge, I think Mr. Hill is talking
5 about exhibits that we disclosed today, and I don't think we
6 are going to get to those tomorrow.

7 THE COURT: I want to resolve them as early as
8 possible. If you have got an issue, put it on the table so I
9 can start looking at it. I only have limited time outside of
10 the court, as you have, to review these documents. I only have
11 a few law clerks and I have to read a lot of stuff.

12 MR. YALOWITZ: It's quality that counts.

13 THE COURT: Have a nice evening.

14 (Adjourned to January 22, 2015, at 9:30 a.m.)
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DEFENDANT EXHIBITS

Exhibit No. Received

71, 72, 73 and 74 968

75 976

PLAINTIFF EXHIBITS

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